

1-8-2010

Fuller v. Dave Callister Clerk's Record v. 1 Dckt. 37035

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LAW CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

DAVID and SHIRLEY FULLER,
a married couple,

PLAINTIFFS-APPELLANTS,

vs.

DAVE CALLISTER, an individual,
CONFLUENCE MANAGEMENT, LLC, an Idaho
limited liability company, and LIBERTY
PARTNERS, INC., an Idaho corporation,

DEFENDANTS-RESPONDENTS.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

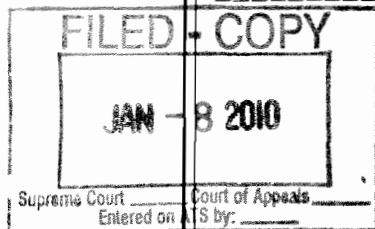
Hon RONALD J. WILPER, District Judge

ED GUERRICABEITIA

Attorney for Appellants

MICHAEL R. JONES

Attorney for Respondents



37035

IN THE SUPREME COURT OF THE STATE OF IDAHO

DAVID and SHIRLEY FULLER, a
married couple,

Supreme Court Case No. 37035

Plaintiffs-Appellants,

vs.

DAVE CALLISTER, an individual,
CONFLUENCE MANAGEMENT, LLC,
an Idaho limited liability company, and
LIBERTY PARTNERS, INC., an Idaho
corporation,

Defendants-Respondents.

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE RONALD J. WILPER

ED GUERRICABEITIA

MICHAEL R. JONES

ATTORNEY FOR APPELLANTS

ATTORNEY FOR RESPONDENTS

BOISE, IDAHO

BOISE, IDAHO

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David Fuller, Shirley Fuller vs. Dave Callister, Confluence Management LLC, Liberty Partners Inc

Date	Code	User		Judge
10/21/2008	NCOC	CCGARDAL	New Case Filed - Other Claims	Ronald J. Wilper
	COMP	CCGARDAL	Complaint Filed	Ronald J. Wilper
	SMFI	CCGARDAL	Summons Filed (3)	Ronald J. Wilper
12/1/2008	AMCO	CCGARDAL	Amended Complaint Filed	Ronald J. Wilper
12/12/2008	NOID	CCDWONCP	Three Day Notice Of Intent To Take Default	Ronald J. Wilper
12/22/2008	NOAP	MCBIEHKJ	Notice Of Appearance M Jones for Callister, Confluence and Liberty	Ronald J. Wilper
	ANSW	MCBIEHKJ	Answer Jones for Callister Confluence and Liberty	Ronald J. Wilper
12/31/2008	NOTC	DCJOHNSI	Notice of Status Conf	Ronald J. Wilper
	HRSC	DCJOHNSI	Hearing Scheduled (Status 02/03/2009 04:00 PM)	Ronald J. Wilper
1/14/2009	NOSV	CCGWALAC	Notice Of Service	Ronald J. Wilper
2/3/2009	STIP	MCBIEHKJ	Stipulation for Scheduling and Planning	Ronald J. Wilper
	HRVC	DCJOHNSI	Hearing result for Status held on 02/03/2009 04:00 PM: Hearing Vacated	Ronald J. Wilper
2/13/2009	HRSC	DCABBOSM	Hearing Scheduled (Jury Trial 10/21/2009 09:00 AM) 4 days	Ronald J. Wilper
	HRSC	DCABBOSM	Hearing Scheduled (Civil Pretrial Conference 10/13/2009 03:30 PM)	Ronald J. Wilper
	ORDR	DCABBOSM	Order Setting Proceedings and Trial	Ronald J. Wilper
2/18/2009	NOSV	CCGARDAL	Notice Of Service	Ronald J. Wilper
3/19/2009	NOTS	CCDWONCP	Notice Of Service	Ronald J. Wilper
3/26/2009	NOTS	CCRANDJD	Notice Of Service	Ronald J. Wilper
6/23/2009	MOTN	CCTOWNRD	Motion for Order Shortening Time	Ronald J. Wilper
	AFSM	CCTOWNRD	Affidavit In Support Of Motion	Ronald J. Wilper
	NOHG	CCTOWNRD	Notice Of Hearing	Ronald J. Wilper
	HRSC	CCTOWNRD	Hearing Scheduled (Motion for Partial Summary Judgment 07/20/2009 11:00 AM)	Ronald J. Wilper
	MOSJ	CCBOYIDR	Motion For Partial Summary Judgment	Ronald J. Wilper
	AFFD	CCBOYIDR	(2) Affidavit in Support of Motion for Partial Summary Judgment	Ronald J. Wilper
	MEMO	CCBOYIDR	Memorandum in Support of Motion for Summary Judgment	Ronald J. Wilper
7/25/2009	ORDR	DCJOHNSI	Order to Shorten Time	Ronald J. Wilper
7/6/2009	MEMO	CCWRIGRM	Defendants Memorandum in Opposition to Plaintiffs Motion for Partial Summary Judgment	Ronald J. Wilper
	AFFD	CCWRIGRM	Affidavit of Michael R Jones	Ronald J. Wilper
10/2009	REPL	CCHOLMEE	Reply Brief to Memorandum in Opposition to Motion for Partial Summary Judgment	Ronald J. Wilper

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David Fuller, Shirley Fuller vs. Dave Callister, Confluence Management LLC, Liberty Partners Inc

Date	Code	User		Judge
7/10/2009	AFFD	CCHOLMEE	Supplemental Affidavit of Ed J Guerricabeitia in Support of Motion for Partial Summary Judgment	Ronald J. Wilper
7/20/2009	DCHH	DCJOHNSI	Hearing result for Motion for Partial Summary Judgment held on 07/20/2009 11:00 AM: District Court Hearing Held Court Reporter: madsen Number of Transcript Pages for this hearing estimated:50	Ronald J. Wilper
8/24/2009	DEOP	DCJOHNSI	Memorandum Decision and Order on Motion for Partial Summary Judgment	Ronald J. Wilper
9/1/2009	OBJC	CCTOWNRD	Objection to the Form of Defendant's Proposed Judgment	Ronald J. Wilper
	NOHG	CCTOWNRD	Notice Of Hearing	Ronald J. Wilper
	HRSC	CCTOWNRD	Hearing Scheduled (Hearing Scheduled 09/28/2009 02:00 PM) Objection to Form of Defendant's Proposed Judgment	Ronald J. Wilper
9/28/2009	JDMT	DCJOHNSI	Judgment Against Plaintiffs	Ronald J. Wilper
	CDIS	DCJOHNSI	Civil Disposition entered for: Callister, Dave, Defendant; Confluence Management LLC, Defendant; Liberty Partners Inc, Defendant; Fuller, David, Plaintiff; Fuller, Shirley, Plaintiff. Filing date: 9/28/2009	Ronald J. Wilper
	STAT	DCJOHNSI	STATUS CHANGED: Closed	Ronald J. Wilper
10/9/2009	MEMC	CCPRICDL	Memorandum Of Costs And Attorney Fees	Ronald J. Wilper
	AFSM	CCPRICDL	Affidavit In Support Of Memorandum and Attorney Fees	Ronald J. Wilper
	APSC	CCTHIEBJ	Appealed To The Supreme Court	Ronald J. Wilper
10/21/2009	MOTN	CCPRICDL	Plaintiff's Motion to Disallow Defendant's Costs and Attorney Fees	Ronald J. Wilper
	MOTN	CCPRICDL	Plaintiff's Motion to Stay Decision on Attorney Fees and Costs Pending Appeal	Ronald J. Wilper
	MEMO	CCPRICDL	Plaintiff's Memorandum in Support of their Motion to Disallow Costs and Attorney Fees	Ronald J. Wilper
	NOTH	CCPRICDL	Notice Of Hearing	Ronald J. Wilper
	HRSC	CCPRICDL	Hearing Scheduled (Motion 11/09/2009 03:30 AM) to Disallow Defendant's Attorney Costs	Ronald J. Wilper
	STAT	CCPRICDL	STATUS CHANGED: Closed pending clerk action	Ronald J. Wilper
11/27/2009	CONT	DCJOHNSI	Continued (Motion 11/09/2009 03:30 PM) to Disallow Defendant's Attorney Costs	Ronald J. Wilper
11/26/2009	REPL	CCNELSRF	Defendants Reply to Plaintiffs Memorandum to Disallow Costs and Attorney Fees	Ronald J. Wilper

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Date: 11/25/2009

North Judicial District Court - Ada County

User: CCLUNDMJ

Time: 12:01 PM

ROA Report

Page 3 of 3

Case: CV-OC-2008-20018 Current Judge: Ronald J. Wilper

David Fuller, etal. vs. Dave Callister, etal.

David Fuller, Shirley Fuller vs. Dave Callister, Confluence Management LLC, Liberty Partners Inc

Date	Code	User		Judge
11/9/2009	DCHH	DCJOHNSI	Hearing result for Motion held on 11/09/2009 03:30 PM: District Court Hearing Held Court Reporter: cromwell Number of Transcript Pages for this hearing estimated: to Disallow Defendant's Attorney Costs-50	Ronald J. Wilper
	STAT	DCJOHNSI	STATUS CHANGED: closed	Ronald J. Wilper

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OCT 21 2008

J. DAVID NAVARRO, Clerk
By A. GARDEN
DEPUTY

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ED GUERRICABEITIA
DAVISON, COPPLE, COPPLE & COPPLE
Attorneys at Law
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Boulevard
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
ISB Nos.: 1085 & 6148

Attorneys for Plaintiffs
David and Shirley Fuller

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID and SHIRLEY FULLER, a married couple,)

Plaintiffs,

vs.

DAVE CALLISTER, an individual,
CONFLUENCE MANAGEMENT, LLC, an Idaho
Limited Liability Company, and LIBERTY
PARTNERS, INC., an Idaho corporation,

Defendants.

CASE NO. **CV** **OC** **0820018**
COMPLAINT AND DEMAND
FOR JURY TRIAL

COME NOW Plaintiffs, David and Shirley Fuller, by and through their attorneys of
record of the firm, Davison, Copple, Copple & Cox, and for cause of action against the
Defendants, jointly and severally, allege and complain as follows:

Jurisdiction, Venue and Parties

1. At all times relevant hereto, Plaintiffs, David and Shirley Fuller (hereinafter
"Fuller") was and now are residents in Ada County, Idaho.

COMPLAINT AND DEMAND FOR JURY TRIAL - 1

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2. At all times relevant hereto, Defendant, David Callister, was and now is a resident in Ada County, Idaho. Defendant Callister is and was a member of Defendant Confluence Management, LLC and President of Defendant Liberty Partners, Inc.

3. At all times relevant hereto, Defendant Confluence Management, LLC, is an Idaho limited liability company in good standing with its principal place of business located in Ada County, Idaho.

4. At all times relevant hereto, Defendant, Liberty Partners, Inc. is an Idaho corporation in good standing with its principal place of business located in Ada County, Idaho.

5. The amount in controversy, exclusive of interest, costs and attorney's fees, exceeds \$10,000.

6. Jurisdiction and venue are therefore proper in this Court.

General Allegations

7. On or about September 20, 2005, Defendant Confluence Management and/or its assigns entered into a Commercial/Investment Real Estate Purchase and Sale Agreement with Plaintiffs to acquire approximately 12.73 acres of land whose property address is commonly known as 890 N. Ten Mile in Meridian, Idaho for the amount of One Million Two Hundred and Seventy-Three Thousand and 00/100 Dollars (\$1,273,000.00). Attached hereto and incorporated herein by reference is a copy of the Real Estate Purchase and Sale Agreement, marked as Exhibit A.

8. During the negotiations for the acquisition of property referenced above, the Ada County Highway District ("ACHD") was attempting to acquire a portion of the subject property for public right of way purposes in lieu of initiating a condemnation action. Defendants and Plaintiffs had actual knowledge of ACHD's intent to acquire a portion of the subject property

and were involved with the negotiations for the amount of just compensation due.

9. On or about September 20, 2005, Defendants Confluence Management and David Callister, entered into an Addendum wherein they agreed that they would deed the property over to ACHD and that the proceeds received from ACHD for the acquisition of the property were to be received by Plaintiffs. The Addendum was executed by Defendant David Callister, individually. Attached hereto and incorporated herein by reference is a copy of the Addendum, marked as Exhibit B.

10. ACHD had actual knowledge that the parties executed the Addendum which provided that Plaintiffs were to receive the condemnation proceeds.

11. At the time of closing, Defendant Callister instructed the closing agent that the property be assigned and conveyed to Defendant Liberty Partners, Inc.

12. Defendants, David Callister and/or Liberty Partners, Inc., accepted ACHD's offer of just compensation in the amount of \$83,921.00 and pursuant to the terms of the Addendum, ACHD issued and forwarded payment to Transnation Title and Escrow. Attached hereto and incorporated herein by reference is a copy of the check issued by ACHD, marked as Exhibit C.

13. Defendants, David Callister and/or Confluence Management, had previously assigned their rights to the property to Defendant Liberty Partners, Inc.

14. On or about August 10, 2006, Defendant Liberty Partners, Inc. entered into a Sale and Purchase Agreement with the State of Idaho and ACHD conveying a portion of the property for the amount of \$83,921.00.

15. Defendant Liberty Partners, Inc. executed a Warranty Deed and Temporary Construction Easement conveying a portion of the property to ACHD. Attached hereto and incorporated herein by reference is a copy of the Warranty Deed executed by Defendant Liberty

Partners, Inc., marked as Exhibit D.

16. Plaintiffs have not received the condemnation proceeds in the amount of \$83,921.00 from the Defendants.

Cause of Action- Breach of Contract (Callister and/or Confluence Management)

17. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as if they were fully set forth herein.

18. Defendant Callister, individually, and Defendant Confluence Management entered into a written Purchase and Sale Agreement wherein they agreed to purchase approximately 12.73 acres of land from Plaintiffs.

19. Defendant Callister, individually, and Defendant Confluence Management entered into an Addendum to the Agreement where they agreed to convey the right of way requested by ACHD and that the right of way proceeds would be received by the Plaintiffs.

20. Plaintiffs conveyed the land to Defendant Liberty Partners per the direction of Defendant Callister, fulfilling their obligation.

21. Defendants, Callister and/or Confluence Management breached their obligations under the Agreement by failing to turn-over the right-of-way proceeds provided by ACHD to Plaintiffs.

22. As a result of Defendants' breach, Plaintiff has suffered substantial damages which amount shall be proven at trial, the amount of which is reducible to a liquidated sum, thereby entitling it to prejudgment interest in accordance with Idaho law.

Cause of Action- Unjust Enrichment (Liberty Partners, Inc.)

23. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as if they were fully set forth herein.

24. Plaintiffs are informed and believe and based upon that information and belief herein allege that Defendant Liberty Partners, Inc. received and kept the right of way proceeds provided by ACHD as herein alleged.

25. Plaintiffs conferred a benefit upon Defendant Liberty Partners by conveying their land pursuant to the terms of the Agreement.

26. Defendant Liberty Partners, Inc., was aware of and appreciated the benefit conferred upon it by Plaintiffs.

27. It is inequitable for Defendant Liberty Partners, Inc., to retain the benefit of the terms of the Agreement without paying Plaintiff the right-of-way proceeds conveyed by ACHD.

28. Because of Defendant's failure to tender the right-of-way proceeds, Defendant has been unjustly enriched in the amount of \$83,921.00, which is the outstanding balance due to Plaintiffs.

29. As a result of the unjust enrichment to Defendant Liberty Partners, Plaintiffs have been damaged in an amount to be proven at trial.

30. The unjust enrichment to Liberty Partners at Plaintiffs expense is reducible to a liquidated sum, thereby entitling it to prejudgment interest in accordance with Idaho law.

Request for Attorney Fees and Costs

Plaintiffs have been required to retain the services of the law firm of Davison, Copple, Copple & Cox in order to prosecute this action and are entitled to reasonable attorneys' fees and costs of suit pursuant to Idaho Code §§ 12-120(3), 12-121, Rule 54 of the Idaho Rules of Civil Procedure, as well as a contractual right provided by the Purchase Agreement identified in Plaintiffs' Complaint. In the event of default on the part of the Defendants above named, the sum of \$5,000 is a reasonable amount in attorney's fees or a greater sum to be determined by the

Court for such reasonable attorney's fees in the event of a contest herein.

Demand for Jury Trial

Plaintiffs hereby demand a trial by jury on all issues of fact in accordance with Rule 38(b) of the Idaho Rules of Civil Procedure. Plaintiffs will not stipulate to a jury of less than twelve (12).

WHEREFORE, Plaintiffs prays for entry of judgment against Defendants, Dave Callister, Confluence Management, LLC and Liberty Partners, Inc. and each of them as follows:

1. Plaintiffs seek an Order from the Court finding that Defendants, David Callister and Confluence Management, jointly and severally, breached its agreement and for an award of damages in the amount of \$83,921.00, plus prejudgment interest to the extent the damages proven are liquidated;
2. Plaintiffs seek an Order from the Court finding that Defendant Liberty Partners Inc. has been unjustly enriched and for an award in an amount of \$83,921.00, plus prejudgment interest to the extent the damages proven are liquidated;
3. That the Court award Plaintiffs their reasonable attorneys' fees and costs in pursuing this matter; and
4. That the Court grant such other and further relief as it deems just and equitable under the circumstances.

DATED this 21st day of October, 2008.

DAVISON, COPPLE, COPPLE & COX

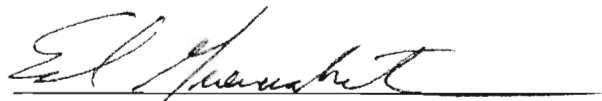

Ed Guerricabeitia, of the firm
Attorneys for Plaintiffs

EXHIBIT A

000012



RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.



1 ID# 74683199 DATE 09/20/2005
 2
 3 LISTING AGENCY ReMax Town & Country Office Phone # 888-9971 Fax # 888-6995
 4 Listing Agent Colleen Calhoun E-Mail _____ Phone # 861-9122
 5 SELLING AGENCY Coldwell Banker Aspen Realty Office Phone # 884-1300 Fax # 884-1306
 6 Selling Agent Rick Thurber E-Mail _____ Phone # 870-3313

7
 8 1. BUYER: Confluence Management and/or assigns
 9 (Hereinafter called "BUYER") agrees to purchase and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "Property."

10
 11 2. PROPERTY ADDRESS AND LEGAL DESCRIPTION: COMMONLY KNOWN AS 890 N. Ten Mile
 12 Meridian City Ada County, ID, Zip 83642 leg
 13 described as: approximately 12.73 acres. Legal to be attached.
 14 ID# _____

15 OR Legal Description Attached as addendum # _____ (Addendum must accompany original offer.)
 16 LIST# _____

3. FINANCIAL TERMS:

17
 18
 19
 20 \$1,273,000 (A). PURCHASE PRICE: One Million Two Hundred and Seventy-Three Thousand DOLLAR
 21 payable upon the following TERMS AND CONDITIONS (not including closing costs): _____
 22
 23

24
 25 \$100,000 (B). EARNEST MONEY: BUYER hereby deposits One Hundred Thousand DOLLAR
 26 as Earnest Money evidenced by: ☐ cash ☐ personal check ☐ cashier's check ☐ note (due date): _____
 27 ☒ other transferred from #3845 and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account ☐ up
 28 receipt, or ☐ upon acceptance by all parties and shall be held by: ☐ Listing Broker ☐ Selling Broker ☒ other paid to seller k
 29 the benefit of the parties hereto. The responsible Broker shall be Larry Laraway
 30

31 (C). ALL CASH OFFER: ☐ NO ☒ YES IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT
 32 TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within 2 business days from the date of this agreement, evidence of
 33 sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to a copy of a recent bank or financial
 34 statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.
 35

36 4. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable."
 37 Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain
 38 facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.
 39

40 5. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed
 41 facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties
 42 will confirm facsimile and electronic transmitted signatures by signing an original document.
 43

44 6. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time
 45 zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business
 46 day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required under
 47 this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be
 48 the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business
 49 day.
 50

51 7. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be
 52 invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be
 53 affected or impaired thereby.
 54

55 8. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the
 56 signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be a
 57 original, and all identical copies shall together constitute one and the same instrument.
 58

BUYER'S Initials PLK Date 9-20-05 SELLER'S Initials PLK Date 9-20-05

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000013

PROPERTY ADDRESS: 890 N. Ten Mile Meridian ID# 74683199

INCLUDED ITEMS:

- (a) All existing fixtures and fittings that are attached to the property are included in the purchase price. (unless excluded below) and shall be transferred free of liens. These include but are not limited to, all attached floor coverings, attached television antennas, satellite dish receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all well coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fire equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks, all water systems, wells, a water that are now on or used in connection with the premises shall be included in the sale unless otherwise provided herein.
- (b) Irrigation fixtures and equipment, and any and all, if any, water and water rights, and any and all, if any, ditches and ditch rights that appurtenant thereto that are now on or used in connection with the premises shall be included in the sale unless otherwise provided herein.
- (c) Other items specifically included in this sale: _____
- (d) Items specifically excluded in this Sale: metal shop, irrigation equipment, fencing and pump

10. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing. 1. Buyer agrees to pay the following: Five acres and homestead at \$600,000 and the balance of the property for \$873,000. 2. Seller to have 120 days after closing to vacate the house and shop and. 3. Seller to have the option to extend an additional 45 days to vacate the shop if needed. 4. The penalty to buyer for not closing on or before Sept. 30, 2005 shall be 3% per month payable on the first day of the month. Penalties shall not apply to the purchase price. 5. This agreement supersedes all previous agreements. 6. Seller to pay utilities while occupying property. "Continue on addendum #2"

11. TITLE COMPANY/CLOSING AGENCY: a) The parties agree that First American Title Company shall provide any required Title Policy and preliminary report of commitment. b) The Closing Agency for this transaction shall be First American located at State St., Boise. The Closing Agency's fee is to be paid by: ☐ BUYER ☐ SELLER ☒ SHARED EQUALLY.

12. TITLE INSURANCE: ☐ BUYER ☒ SELLER to pay for a standard Owner's or Purchaser's Title Policy premium in this transaction. Purchaser's Extended Coverage Title Policy requested ☐ Yes ☒ No. Additional premium to be paid by ☐ BUYER ☒ SELLER ☐ NA. Title Company to provide all parties to this Agreement with a preliminary Title Report on or before closing. BUYER shall have one business days to object in writing to the condition of the title as set forth in the report. In the event BUYER makes written objection to the title, SELLER shall have a reasonable time, not to exceed 1 business day(s), to cure any defects of title or provide affirmative Title Insurance coverage. In the event that SELLER refuses to cure defects of title, BUYER may elect, as its sole remedy, to either terminate this Agreement or cure the defects at BUYER's expense, or proceed to closing, taking title subject to such defects. If BUYER does not so object, BUYER shall be deemed to have accepted the condition of the title. In the event BUYER elects to terminate the Agreement due to unsatisfactory title conditions, BUYER shall be entitled to the return of all refundable deposits made by BUYER but that such return of deposits shall not constitute a waiver of other remedies available to BUYER. The Title Company shall deliver the final Title Insurance policy to BUYER as soon as possible after closing.

13. ESCROW/COLLECTION: If a long-term escrow/collection is involved, then the escrow/collection holder shall be First American Title. Each party agrees to pay one-half of escrow/collection fees and escrow setup fees.

14. CLOSING DATE: On or before the closing date, BUYER and SELLER shall deposit with the Closing Agency all funds and instruments necessary to complete the sale. The closing date shall be no later than September 30, 2005. "Closing Date" means the date on which all documents are either recorded or accepted by an escrow/collection agency and the sale proceeds are available to SELLER.

15. POSSESSION/PRORATION: BUYER shall be entitled to possession ☐ UPON CLOSING or ☐ DATE see paragraph #10 TIME ☐ AM ☐ PM. Taxes and water assessments (using the last available assessment as a basis), rents, insurance premiums, interest and reserve on liens, encumbrances or obligations assumed and utilities shall be prorated as of the day of closing or na. Any tenant deposits held by SELLER shall be credited to BUYER at closing.

16. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker, provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of Brokerage fee, title insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, Brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

BUYER'S Initials (AKW) Date 9-20-05

SELLER'S Initials (SP) Date 9-20-05

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PROPERTY ADDRESS: 890 N. Ten Mile Meridian ID# 74683199

17. **ATTORNEY'S FEES:** If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs as on appeal.
18. **EARNEST MONEY DISPUTE / INTERPLEADER:** Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received from the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.
19. **TITLE CONVEYANCE:** Title of SELLER is to be conveyed by ☒ warranty deed ☐ special warranty deed or ☐ _____ deed, and is to be marketable and insurable except for rights reserved in federal patents, building or use restrictions, building zoning regulations and ordinances of any governmental unit, rights of way and easements established or of record and any other liens, encumbrances or defects approved by BUYER.
20. **RISK OF LOSS:** Should the Property be materially damaged by fire or other cause prior to closing, unless BUYER has taken possession prior to closing by Agreement, this Agreement shall be voidable at the option of BUYER.
21. **CONDITION OF PROPERTY AT CLOSING:** BUYER agrees to purchase the Property in as-is condition, where is, with all faults and with no repairs required. BUYER will assume all obligations with respect to the Property. SELLER shall maintain the Property until the closing in its present condition ordinary wear and tear excepted, and loss by casualty.
22. **INSPECTION:** BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall within 10 business day(s) of acceptance, complete these inspections and give to SELLER written notice of items disapproved of. BUYER is strongly advised to exercise these rights and to make BUYER's own selection of professionals with appropriate qualifications to conduct inspections of the entire property. BUYER's acceptance of the condition of the property is a contingency of this Agreement. BUYER chooses ☐ to have inspection; ☒ not to have inspection. If BUYER chooses not to have inspection skip Section 23.
23. **SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:**
1. If BUYER does not within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.
 2. If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have _____ business day(s) in which to respond in writing. The SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYERS inspection contingency.
 3. If the SELLER elects not to correct the disapproved items, or does not respond within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within _____ business days that they will not continue with the transaction and will receive their Earnest Money back.
 4. If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER, unless required by local law.
24. **ANNEXATION AND CITY SERVICES:** The property is located in the city limits now ☐ Yes ☒ No ☐ N/A OR the property is located in an area of CITY IMPACT, ADJACENT OR CONTIGUOUS to a city limits and/or the subdivision plat and CC&R's indicate properties will be annexed when appropriate time is reached, and thus are legally subject to annexation by the city at a future time ☒ YES ☐ NO ☐ N/A
THE PROPERTY IS NOT WITHIN THE CITY LIMITS AT THIS TIME BUT DOES RECEIVE SOME CITY SERVICES: ☒ YES ☐ NO ☐ N/A
25. **ENTIRE AGREEMENT:** This Agreement, including any Addendums or exhibits, constitutes the entire Agreement between the parties and no warranties, including any warranty of habitability or representations have been made or shall be binding upon either party unless herein set forth.
26. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

BUYER'S Initials [Signature] Date 9-20-05SELLER'S Initials [Signature] Date 9-20-05

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000015

PROPERTY ADDRESS: 890 N. Ten Mile Meridian ID# 74683199

27. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- ☒ A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
☐ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
☐ D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- ☒ A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
☐ B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
☐ D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

28. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

29. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) _____ at (Location) _____ Time) _____ ☐ A.M. ☐ P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

30. BUYER'S SIGNATURES: ☐ SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)

BUYER Signature _____
 Date _____ Time _____ ☐ A.M. ☐ P.M.
 Address _____
 E-Mail Address _____

BUYER (Print Name) _____
 Phone # _____ Cell # _____
 City _____ State _____ Zip _____
 Fax # _____

BUYER Signature _____
 Date _____ Time _____ ☐ A.M. ☐ P.M.
 Address _____
 E-Mail Address _____

BUYER (Print Name) _____
 Phone # _____ Cell # _____
 City _____ State _____ Zip _____
 Fax # _____

31. SELLER'S SIGNATURES: On this date, We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

☐ SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER ☐ SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

SELLER Signature David S Fuller
 Date 9-20-05 Time 10:15 ☒ A.M. ☐ P.M.
 Address 890 N Ten Mile
 E-Mail Address _____

SELLER (Print Name) DAVID S Fuller
 Phone # 888-3219 Cell # 861-2321
 City Meridian State Ida Zip 83642
 Fax # _____

SELLER Signature Shirley A. Fuller
 Date 9-20-05 Time 11:15 ☒ A.M. ☐ P.M.
 Address 890 N. Ten Mile
 E-Mail Address _____

SELLER (Print Name) Shirley A. Fuller
 Phone # 888-3219 Cell # _____
 City Meridian State Ida Zip 83642
 Fax # _____

EXHIBIT B

000017

RE-11 ADDENDUM # 1 (1,2,3, etc.)Date: 9/20/05

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement and Receipt for Earnest Money. ("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

PURCHASE AND SALE AGREEMENT DATED: 9/20/05 ID# 74683199ADDRESS: 890 N. Ten MileBUYER(S): Confluence Management and/or assignsSELLER(S): Dave and Shirley Fuller

The undersigned parties hereby agree as follows:

****continuation of the Earnest Money Agreement paragraph #10****

1. It is understood that seller intends to do a 1031 exchange with this sale, or a portion thereof. Buyer agrees to sign any additional documentation to accommodate said exchange at no additional cost to buyer.
 2. Buyer agrees to furnish to the seller a letter stating a valuation of \$8.00 per square foot for the buyers property on Locust Grove Rd.
 3. Seller to receive any and all funds paid for road right of way including land, landscaping, fencing, sprinklers and temporary easements.
- Escrow instructions by the title company will cover the receipt and disbursement of the right of way funds. It is understood that buyer will be deeding the right of way to ACHD and that the seller, Dave and Shirley Fuller will receive all of said funds paid by ACHD. Said amount has not been yet determined and Dave and Shirley Fuller retain the right to negotiate the amount with ACHD.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER: [Signature]Date: 9-20-05BUYER: [Signature]Date: 9-20-05SELLER: Dave FullerDate: 9-20-05SELLER: Shirley A FullerDate: 9-20-05

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EXHIBIT C

000013

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	GROSS AMOUNT	DISCOUNT	NET AMOUNT
08/22/06	08/22/06		83,921.00		83,921

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	GROSS AMOUNT	DISCOUNT	NET AMOUNT
08/22/06	08/22/06		83,921.00		83,921
TOTALS			83,921.00		83,921.00

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED ABOVE
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.



ADA COUNTY HIGHWAY DISTRICT
3775 ADAMS STREET
GARDEN CITY, IDAHO 83714



ADA COUNTY HIGHWAY DISTRICT
3775 ADAMS STREET
GARDEN CITY, IDAHO 83714

BOISE OFFICE
WELLS FARGO BANK

92-379
1241

CHECK DATE
08/25/06

CHECK NO.
052044

PAY

Eighty-Three Thousand Nine Hundred
Twenty-One Dollars and 00 Cents

CHECK AMOUNT

\$ *****83,921.00

VOID IF NOT CASHED WITHIN 90 DAYS

TO THE
ORDER OF

TRANSACTION TITLE &
ESCROW
1750 FRONT ST.
BOISE ID 83702

John S. Stransky
Michael L. Brooker

EXHIBIT D

000021



Project Name: Ten Mile Rd, Franklin Rd / Cherry Ln
Project No.: 504003
R/W Parcel No.: 15/36
Township/Range/Section: T3N, R1W, Sec. 11

03000 16395-NB1

(Reserved for Ada County Recorder)

WARRANTY DEED

THIS INDENTURE, made this 10th day of August, 2006,
LIBERTY PARTNERS, INC., State of
Idaho, the "GRANTOR", and ADA COUNTY HIGHWAY DISTRICT, a body politic and
corporate of the State of Idaho, the "GRANTEE";

WITNESSETH:

FOR VALUE RECEIVED, the GRANTOR has granted, conveyed, bargained and sold,
and does hereby grant, bargain, sell, convey and confirm to the GRANTEE and its successors
and assigns forever, that certain real property situated in the COUNTY OF ADA, STATE OF
IDAHO, more particularly described on Exhibit "A" attached hereto and by this reference made a
part hereof,

TOGETHER with all and singular the buildings, structures, improvements and fixtures thereto,
the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining,
the reversion and reversions, remainder and remainders, and rents, issues and profits thereof (the
"Premises").

Subject to those exceptions to GRANTOR's title as are set forth on Exhibit "B" attached
hereto and by this reference made a part hereof.

SUBJECT TO those exceptions to title to which this conveyance is expressly made
subject and those made, suffered or done by the GRANTEE: (a) the GRANTOR covenants to the
GRANTEE, its successors and assigns, that the GRANTEE shall enjoy the quiet and peaceful
possession of the Premises; and (b) GRANTOR warrants to the GRANTEE, its successors and
assigns, that GRANTOR is the owner of said Premises in fee simple and has the right and
authority to convey the same to GRANTEE, and GRANTOR will defend the GRANTEE's title
from all lawful claims whatsoever.

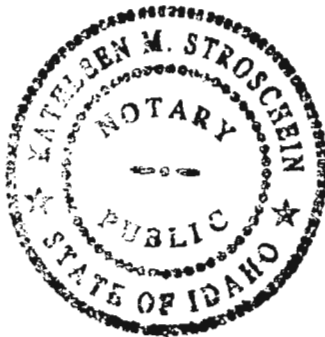
Ada County Highway District
3775 Adams Street
Garden, Idaho 83714-6499

and year herein first above written.

[illegible]

On this 10th day of August, 2006, before me, ~~David Callister~~ ^{Kathleen M. Spraschein} a Notary Public in and for the State of Idaho, personally appeared David Callister, known or identified to me to be the President, and ~~_____~~, known or identified to me to be the Secretary of the Corporation that executed this instrument or the person who executed this instrument on behalf of said Corporation, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Kathleen M. Stroschein
Notary Public for the State of Idaho
Residing at Boise Idaho
My Commission expires 6/30/10

Owner of Record: David & Shirley Fuller
Parcel: No. 15 (S1211233710)
ACHD Project: Ten Mile Road (Franklin to Cherry)
Project No.: 504003

EXHIBIT "A"

Legal Description

A parcel of land located in the SW 1/4 of the NW 1/4 of Section 11, Township 3 North, Range 1 West, Boise Meridian, Ada County, Idaho, said parcel also being a portion of Parcel 3 as shown in Record of Survey No. 1951, filed in Book G at Page 1979, filed as instrument number 9150717, records of Ada County being more particularly described as follows:

Commencing at the southwest corner of the SW 1/4 of the NW 1/4 of Section 11, said point being the POINT OF BEGINNING;

Thence N 0°24'49" E, 699.89 feet (formerly N 0°25'27" E, 699.89 feet) along the west boundary of the SW 1/4 of the NW 1/4 of said Section 11 to a point;

Thence leaving said west boundary S 87°36'01" E, 48.03 feet (formerly S 87°35'23" E) along the north boundary of Parcel 3 of said Record of Survey No. 1951 to a point;

Thence S 0°24'49" W, 648.56 feet along a line parallel to and measuring 48.00 feet from said west boundary of the SW 1/4 of the NW 1/4 to a point;

Thence S 44°35'09" E, 21.36 feet to a point, said point lying 35.00 feet from the south boundary of said SW 1/4 of the NW 1/4 of Section 11;

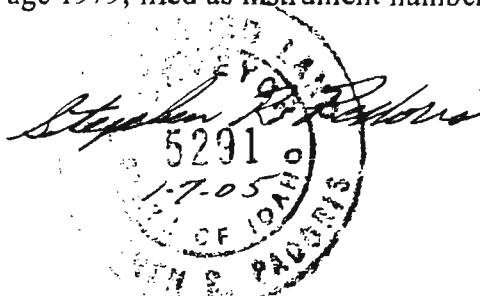
Thence S 89°11'15" E, 250.05 feet along a line parallel to and measuring 35.00 feet from said south boundary of the SW 1/4 of the NW 1/4 to a point on the east boundary of said Parcel 3;

Thence S 0°25'09" W, 35.00 feet (formerly S 00°25'27" W) along said east boundary to a point on the south boundary of said SW 1/4 of the NW 1/4;

Thence N 89°11'15" W, 313.15 feet (formerly N 89°10'57" W, 313.15 feet) along the south boundary of said SW 1/4 of the NW 1/4 to the POINT OF BEGINNING.

Said described parcel contains 42,956 Square feet (0.99 acres) and is subject to easements of record or in use. Said parcel contains 31,486 SF (0.72 acres) of existing Pine Avenue prescriptive right-of-way.

This legal description was prepared by the ACHD Survey Section from that Record of Survey No. 1951, filed in Book G at Page 1979, filed as instrument number 9150717, records of Ada County.



000024

Owner of Record: David & Shirley Fuller
Parcel: No. 36 (S1211233750)
ACHD Project: Ten Mile Road (Franklin to Cherry)
Project No.: 504003

Legal Description

A parcel of land located in the SW 1/4 of the NW 1/4 of Section 11, Township 3 North, Range 1 West, Boise Meridian, Ada County, Idaho, said parcel also being a portion of Parcel 4 as shown in Record of Survey No. 1951, filed in Book G at Page 1979, filed as instrument number 9150717, records of Ada County being more particularly described as follows:

Commencing at the southwest corner of the SW 1/4 of the NW 1/4 of Section 11, thence S 89°11'15" E, 313.15 feet (formerly S 89°10'57" E, 313.15 feet) along the south boundary of the SW 1/4 of the NW 1/4 of said Section 11 to a point, said point being the POINT OF BEGINNING;

Thence continuing S 89°11'15" E, 541.49 feet (formerly S 89°10'57" E, 541.49 feet) along the south boundary of said SW 1/4 of the NW 1/4 of Section 11 to a point;

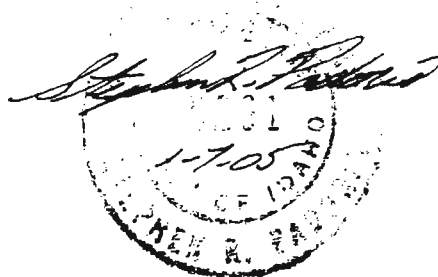
Thence leaving said south boundary N 0°48'45" E, 35.00 feet (formerly N 0°49'03" E) along the east boundary of said Parcel 4 to a point;

Thence N 89°11'15" W, 541.73 feet along a line parallel to and measuring 35.00 feet from said south boundary of the SW 1/4 of the NW 1/4 to a point on the west boundary of said Parcel 4;

Thence S 0°25'09" W, 35.00 feet (formerly S 0°25'27" W) along said west boundary of Parcel 4 to the POINT OF BEGINNING.

Said described parcel contains 18,956 Square feet (0.44 acres) and is subject to easements of record or in use. Said parcel contains 16,248 SF (0.37 acres) of existing Pine Avenue prescriptive right-of-way.

This legal description was prepared by the ACHD Survey Section from that Record of Survey No. 1951, filed in Book G at Page 1979, filed as instrument number 9150717, records of Ada County.



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Exceptions to Title

1. Ditch, road and public utility easements as same may exist over said premises.
2. Easement as granted to The Mountain States Telephone and Telegraph Company, by instrument recorded June 12, 1978, as instrument No. 7831378, of Official Records; for operation, maintenance and repair of its lines.
3. Rights and claims in and to that portion of said premises lying within the West Pine Street right of way.
4. Rights and claims in and to that portion of said premises lying within the Ten Mile Road right of way.
5. Rights and claims in and to that portion of said premises lying within the Ten Mile Stub Drain right of way.
6. Matters as disclosed by Record of Survey, recorded September 11, 1991 as instrument No. 9150717, of Official Records.

DEC 01 2008

J. DAVID NAVARRO, Clerk
By A. GARDEN
DEPUTY

E DON COPPLE
ED GUERRICABEITIA
DAVISON, COPPLE, COPPLE & COPPLE
Attorneys at Law
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Boulevard
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
ISB Nos.: 1085 & 6148

Attorneys for Plaintiffs
David and Shirley Fuller

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID and SHIRLEY FULLER, a married couple,)

Plaintiffs,

vs.

DAVE CALLISTER, an individual,
CONFLUENCE MANAGEMENT, LLC, an Idaho
Limited Liability Company, and LIBERTY
PARTNERS, INC., an Idaho corporation,

Defendants.

CASE NO.: CV OC 0820018

AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

COME NOW Plaintiffs, David and Shirley Fuller, by and through their attorneys of
record of the firm, Davison, Copple, Copple & Cox, and for cause of action against the
Defendants, jointly and severally, allege and complain as follows:

Jurisdiction, Venue and Parties

1. At all times relevant hereto, Plaintiffs, David and Shirley Fuller (hereinafter
"Fuller") was and now are residents in Ada County, Idaho.

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 1

000027

2. At all times relevant hereto, Defendant, David Callister, was and now is a resident in Ada County, Idaho. Defendant Callister is and was a member of Defendant Confluence Management, LLC and President of Defendant Liberty Partners, Inc.

3. At all times relevant hereto, Defendant Confluence Management, LLC, is an Idaho limited liability company in good standing with its principal place of business located in Ada County, Idaho.

4. At all times relevant hereto, Defendant, Liberty Partners, Inc. is an Idaho corporation in good standing with its principal place of business located in Ada County, Idaho.

5. The amount in controversy, exclusive of interest, costs and attorney's fees, exceeds \$10,000.

6. Jurisdiction and venue are therefore proper in this Court.

General Allegations

7. On or about September 20, 2005, Defendant Confluence Management and/or its assigns entered into a Commercial/Investment Real Estate Purchase and Sale Agreement with Plaintiffs to acquire approximately 12.73 acres of land whose property address is commonly known as 890 N. Ten Mile in Meridian, Idaho for the amount of One Million Two Hundred and Seventy-Three Thousand and 00/100 Dollars (\$1,273,000.00). Attached hereto and incorporated herein by reference is a copy of the Real Estate Purchase and Sale Agreement, marked as Exhibit A.

8. During the negotiations for the acquisition of property referenced above, the Ada County Highway District ("ACHD") was attempting to acquire a portion of the subject property for public right of way purposes in lieu of initiating a condemnation action. Defendants and Plaintiffs had actual knowledge of ACHD's intent to acquire a portion of the subject property

and were involved with the negotiations for the amount of just compensation due.

9. On or about September 20, 2005, Defendants Confluence Management and David Callister, entered into an Addendum wherein they agreed that they would deed the property over to ACHD and that the proceeds received from ACHD for the acquisition of the property were to be received by Plaintiffs. The parties hereto agreed that Fuller would retain the right to negotiate the amount of just compensation owed by ACHD. The Addendum was executed by Defendant David Callister, individually. Attached hereto and incorporated herein by reference is a copy of the Addendum, marked as Exhibit B.

10. ACHD had actual knowledge that the parties executed the Addendum which provided that Plaintiffs were to receive the condemnation proceeds and handle the negotiations.

11. At the time of closing, Defendant Callister instructed the closing agent that the property be assigned and conveyed to Defendant Liberty Partners, Inc.

12. Defendants, David Callister and/or Liberty Partners, Inc., accepted ACHD's offer of just compensation in the amount of \$83,921.00 without consulting nor allowing the opportunity for Fuller to negotiate and ascertain the true amount of just compensation owed for the taking of the real property. In accordance with the terms of the Addendum, ACHD issued and forwarded payment to Transnation Title and Escrow. Attached hereto and incorporated herein by reference is a copy of the check issued by ACHD, marked as Exhibit C.

13. Defendants, David Callister and/or Confluence Management, had previously assigned their rights to the property to Defendant Liberty Partners, Inc.

14. On or about August 10, 2006, Defendant Liberty Partners, Inc. entered into a Sale and Purchase Agreement with the State of Idaho and ACHD conveying a portion of the property for the amount of \$83,921.00.

15. Defendant Liberty Partners, Inc. executed a Warranty Deed and Temporary Construction Easement conveying a portion of the property to ACHD. Attached hereto and incorporated herein by reference is a copy of the Warranty Deed executed by Defendant Liberty Partners, Inc., marked as Exhibit D.

16. Plaintiffs have not received the condemnation proceeds in the amount of \$83,921.00 from the Defendants nor have the opportunity to negotiate and ascertain the full amount of the just compensation due and owing by ACHD.

Cause of Action- Breach of Contract (Callister and/or Confluence Management)

17. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as if they were fully set forth herein.

18. Defendant Callister, individually, and Defendant Confluence Management entered into a written Purchase and Sale Agreement wherein they agreed to purchase approximately 12.73 acres of land from Plaintiffs.

19. Defendant Callister, individually, and Defendant Confluence Management entered into an Addendum to the Agreement where they agreed to convey the right of way requested by ACHD and that the right of way proceeds would be received by the Plaintiffs. Plaintiffs reserved the right to negotiate the just compensation owed by ACHD.

20. Plaintiffs conveyed the land to Defendant Liberty Partners per the direction of Defendant Callister, fulfilling their obligation.

21. Without consulting Plaintiffs, Defendants, Callister and/or Confluence Management accepted ACHD's offer of just compensation to Plaintiffs' detriment, and failed to convey the right-of-way proceeds provided by ACHD to Plaintiffs constituting a breach of their agreement.

22. As a result of Defendants' breach, Plaintiffs have suffered substantial damages which amount shall be proven at trial, the amount of which is reducible to a liquidated sum, thereby entitling it to prejudgment interest in accordance with Idaho law.

Cause of Action- Unjust Enrichment (Liberty Partners, Inc.)

23. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as if they were fully set forth herein.

24. Plaintiffs are informed and believe and based upon that information and belief herein allege that Defendant Liberty Partners, Inc. received and kept the right of way proceeds provided by ACHD as herein alleged.

25. Plaintiffs conferred a benefit upon Defendant Liberty Partners by conveying their land pursuant to the terms of the Agreement.

26. Defendant Liberty Partners, Inc., was aware of and appreciated the benefit conferred upon it by Plaintiffs.

27. It is inequitable for Defendant Liberty Partners, Inc., to retain the benefit of the terms of the Agreement without paying Plaintiff the right-of-way proceeds conveyed by ACHD.

28. Because of Defendant's failure to tender the right-of-way proceeds, Defendant has been unjustly enriched in the amount of \$83,921.00, which is the outstanding balance due to Plaintiffs.

29. As a result of the unjust enrichment to Defendant Liberty Partners, Plaintiffs have been damaged in an amount to be proven at trial.

30. The unjust enrichment to Liberty Partners at Plaintiffs expense is reducible to a liquidated sum, thereby entitling it to prejudgment interest in accordance with Idaho law.

Request for Attorney Fees and Costs

Plaintiffs have been required to retain the services of the law firm of Davison, Copple, Copple & Cox in order to prosecute this action and are entitled to reasonable attorneys' fees and costs of suit pursuant to Idaho Code §§ 12-120(3), 12-121, Rule 54 of the Idaho Rules of Civil Procedure, as well as a contractual right provided by the Purchase Agreement identified in Plaintiffs' Complaint. In the event of default on the part of the Defendants above named, the sum of \$5,000 is a reasonable amount in attorney's fees or a greater sum to be determined by the Court for such reasonable attorney's fees in the event of a contest herein.

Demand for Jury Trial

Plaintiffs hereby demand a trial by jury on all issues of fact in accordance with Rule 38(b) of the Idaho Rules of Civil Procedure. Plaintiffs will not stipulate to a jury of less than twelve (12).

WHEREFORE, Plaintiffs prays for entry of judgment against Defendants, Dave Callister, Confluence Management, LLC and Liberty Partners, Inc. and each of them as follows:

1. Plaintiffs seek an Order from the Court finding that Defendants, David Callister and Confluence Management, jointly and severally, breached its agreement and for an award of damages to be proven at trial, plus prejudgment interest to the extent the damages proven are liquidated;
2. Plaintiffs seek an Order from the Court finding that Defendant Liberty Partners Inc. has been unjustly enriched and for an award in an amount of \$83,921.00, plus prejudgment interest to the extent the damages proven are liquidated;
3. That the Court award Plaintiffs their reasonable attorneys' fees and costs in pursuing this matter; and
4. That the Court grant such other and further relief as it deems just and equitable

under the circumstances.

DATED this 1st day of December, 2008.

DAVISON, COPPLE, COPPLE & COX



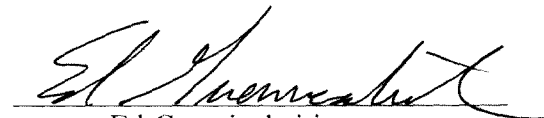
Ed Guerricabeitia, of the firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of December, 2008 a true and correct original of the foregoing was served upon the following by the method indicated below:

Michael R. Jones
Michael R. Jones PLLC
508 North 13th Street
Boise, Idaho 83702

 X U.S. MAIL
 Hand Delivery
 Facsimile Transmission:



Ed Guerricabeitia

EXHIBIT A



RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.



1 ID# 74683199 DATE 09/20/2005
 2
 3 LISTING AGENCY ReMax Town & Country Office Phone # 888-9971 Fax # 888-61
 4 Listing Agent Colleen Calhoun E-Mail _____ Phone # 861-9122
 5 SELLING AGENCY Coldwell Banker Aspen Realty Office Phone # 884-1300 Fax # 884-1
 6 Selling Agent Rick Thurber E-Mail _____ Phone # 870-3313

7
 8 1. BUYER: Confluence Management and/or assigns
 9 (Hereinafter called "BUYER") agrees to purchase and the undersigned SELLER agrees to sell the following described real estate hereinafter
 10 to as "Property."

11 2. PROPERTY ADDRESS AND LEGAL DESCRIPTION: COMMONLY KNOWN AS 890 N. Ten Mile
 12 Meridian City Ada County, ID, Zip 83642
 13 described as: approximately 12.73 acres. Legal to be attached.

14 ID# _____
 15 OR Legal Description Attached as addendum # _____ (Addendum must accompany original offer.)
 16

3. FINANCIAL TERMS:

17
 18 \$ 1,273,000 (A). PURCHASE PRICE: One Million Two Hundred and Seventy-Three Thousand DO
 19 payable upon the following TERMS AND CONDITIONS (not including closing costs): _____
 20
 21

22
 23 \$ 100,000 (B). EARNEST MONEY: BUYER hereby deposits One Hundred Thousand DO
 24 as Earnest Money evidenced by: ☐ cash ☐ personal check ☐ cashier's check ☐ note (due date): _____
 25 ☒ other transferred from #3845 and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account ☐
 26 receipt, or ☐ upon acceptance by all parties and shall be held by: ☐ Listing Broker ☐ Selling Broker ☒ other paid to seller
 27 the benefit of the parties hereto. The responsible Broker shall be Larry Laraway
 28

29 (C). ALL CASH OFFER: ☐ NO ☒ YES IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJ
 30 TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within 2 business days from the date of this agreement, evidence
 31 sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to a copy of a recent bank or fi
 32 statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.
 33

34 4. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applic
 35 Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated c
 36 facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.
 37

38 5. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any s
 39 facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the p
 40 will confirm facsimile and electronic transmitted signatures by signing an original document.
 41

42 6. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local
 43 zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a bus
 44 day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required
 45 this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day sh
 46 the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent bus
 47 day.
 48

49 7. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, sh
 50 invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any w
 51 affected or impaired thereby.
 52

53 8. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mea
 54 signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to
 55 original, and all identical copies shall together constitute one and the same instrument.
 56

57 BUYER'S Initials ML Date 9-20-05 SELLER'S Initials DSF Date 9-20-05
 58 This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the
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PROPERTY ADDRESS: 890 N. Ten Mile Meridian ID# 74683199

INCLUDED ITEMS:

- (a) All existing fixtures and fittings that are attached to the property are included in the purchase price. (unless excluded below) and transferred free of liens. These include but are not limited to, all attached floor coverings, attached television antennae, satellite receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks, all water systems, wells water that are now on or used in connection with the premises shall be included in the sale unless otherwise provided herein.
- (b) Irrigation fixtures and equipment, and any and all, if any, water and water rights, and any and all, if any, ditches and ditch rights appurtenant thereto that are now on or used in connection with the premises shall be included in the sale unless otherwise provided
- (c) Other items specifically included in this sale: _____
- (d) Items specifically excluded in this Sale: metal shop, irrigation equipment, fencing and pump

10. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing. 1. Buyer agrees to pay the following: Five acres and homesite at \$600,000 and the balance of the property for \$673,000. 2. Sellers to have 120 days after closing to vacate the house and area. Seller to have the option to extend an additional 45 days to vacate the shop if needed. 3. Seller not to any rent. 4. The penalty to buyer for not closing on or before Sept. 30, 2005 shall be 3% per month payable the first day of the month. Penalties shall not apply to the purchase price. 5. This agreement supersedes all previous agreements. 6. Seller to pay utilities while occupying property. "continue on addendum #2"

11. TITLE COMPANY/CLOSING AGENCY: a) The parties agree that First American Title Company shall provide any required Title Policy and preliminary report of commitment. b) The Closing Agency for this transaction shall be First American located at State St., Boise. The Closing Agency's fee shall be paid by: ☐ BUYER ☐ SELLER ☒ SHARED EQUALLY.

12. TITLE INSURANCE: ☐ BUYER ☒ SELLER to pay for a standard Owner's or Purchaser's Title Policy premium in this transaction. Purchaser's Extended Coverage Title Policy requested ☐ Yes ☒ No. Additional premium to be paid by ☐ BUYER ☐ SELLER ☒ NA. Title Company to provide all parties this Agreement with a preliminary Title Report on or before closing. BUYER shall have one business days to object in writing to the condition of the title as set forth in the report. In the event BUYER makes written objection to the title, SELLER shall have a reasonable time not to exceed 1 business day(s), to cure any defects of title or provide affirmative Title Insurance coverage. In the event that SELLER refuses to cure defects of title, BUYER may elect, as its sole remedy, to either terminate this Agreement or cure the defects at BUYER's expense, or proceed to close taking title subject to such defects. If BUYER does not so object, BUYER shall be deemed to have accepted the condition of the title. In the event BUYER elects to terminate the Agreement due to unsatisfactory title conditions, BUYER shall be entitled to the return of all refundable deposits made by BUYER that such return of deposits shall not constitute a waiver of other remedies available to BUYER. The Title Company shall deliver the final Title Insurance policy to BUYER as soon as possible after closing.

13. ESCROW/COLLECTION: If a long-term escrow/collection is involved, then the escrow/collection holder shall be First American Title. Each party agrees to pay one-half of escrow/collection fees and escrow setup fees.

14. CLOSING DATE: On or before the closing date, BUYER and SELLER shall deposit with the Closing Agency all funds and instruments necessary to complete the sale. The closing date shall be no later than September 30, 2005. "Closing Date" means the date on which all documents are either recorded or accepted by an escrow/collection agency and the sale proceeds are available to SELLER.

15. POSSESSION/PRORATION: BUYER shall be entitled to possession ☐ UPON CLOSING or ☐ DATE see paragraph #10 TIME _____ ☐ AM ☐ PM. Taxes and water assessments (using the latest available assessment as a basis), rents, insurance premiums, interest and reserve on liens, encumbrances or obligations assumed and utilities shall be prorated as of the day of closing or na. Any tenant deposits held by SELLER shall be credited to BUYER at closing.

16. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of Brokerage fees, title insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, Brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

BUYER'S Initials (JK) Date 9-20-05SELLER'S Initials (SP) Date 9-20-05

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PROPERTY ADDRESS:

890 N. Ten Mile

Meridian

ID#

74683199

17. **ATTORNEY'S FEES:** If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs on appeal.
18. **EARNEST MONEY DISPUTE / INTERPLEADER:** Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received from the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any procedure or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.
19. **TITLE CONVEYANCE:** Title of SELLER is to be conveyed by ☒ warranty deed ☐ special warranty deed or ☐ _____ deed, and is to be marketable and insurable except for rights reserved in federal patents, building or use restrictions, but zoning regulations and ordinances of any governmental unit, rights of way and easements established or of record and any other liens, encumbrances or defects approved by BUYER.
20. **RISK OF LOSS:** Should the Property be materially damaged by fire or other cause prior to closing, unless BUYER has taken possession prior to closing, this Agreement shall be voidable at the option of BUYER.
21. **CONDITION OF PROPERTY AT CLOSING:** BUYER agrees to purchase the Property in as-is condition, where is, with all faults and with all improvements required. BUYER will assume all obligations with respect to the Property. SELLER shall maintain the Property until the closing in its present condition, ordinary wear and tear excepted, and loss by casualty.
22. **INSPECTION:** BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within 10 business day(s) of acceptance, complete these inspections and give to SELLER written notice of items disapproved of. BUYER is advised to exercise these rights and to make BUYER's own selection of professionals with appropriate qualifications to conduct inspections of the property. BUYER's acceptance of the condition of the property is a contingency of this Agreement. BUYER chooses ☐ to have inspection; ☒ not to have inspection. If BUYER chooses not to have inspection skip Section 23.
23. **SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:**
1. If BUYER does not within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction assuming all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to correct.
 2. If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER per section(s) of written inspection reports. SELLER shall have _____ business day(s) in which to respond in writing. The SELLER, at their option, correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BL letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYERS inspection contingency.
 3. If the SELLER elects not to correct the disapproved items, or does not respond within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice _____ business days that they will not continue with the transaction and will receive their Earnest Money back.
 4. If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections made by any governmental building or zoning inspector or government employee without the prior consent of SELLER, unless required by local ordinance.
24. **ANNEXATION AND CITY SERVICES:** The property is located in the city limits now ☐ Yes ☒ No ☐ N/A OR the property is located in an area of IMPACT, ADJACENT OR CONTIGUOUS to a city limits and/or the subdivision plat and CC&R's indicate properties will be annexed when appropriate is reached, and thus are legally subject to annexation by the city at a future time ☒ YES ☐ NO ☐ N/A
THE PROPERTY IS NOT WITHIN THE CITY LIMITS AT THIS TIME BUT DOES RECEIVE SOME CITY SERVICES: ☒ YES ☐ NO ☐ N/A
25. **ENTIRE AGREEMENT:** This Agreement, including any Addendums or exhibits, constitutes the entire Agreement between the parties and no warranty including any warranty of habitability or representations have been made or shall be binding upon either party unless herein set forth.
26. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

BUYER'S Initials (DM) Date 9-20-05SELLER'S Initials DSF SPK Date 9-20-05

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PROPERTY ADDRESS: 890 N. Ten Mile Meridian ID# 74683199

27. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- ☒ A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- ☐ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED
- ☐ C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED acting solely on behalf of the BUYER(S).
- ☐ D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- ☒ A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- ☐ B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED
- ☐ C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED acting solely on behalf of the SELLER(S).
- ☐ D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

28. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

29. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) _____ at _____ (Time) _____ ☐ A.M. ☐ P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be returned to BUYER on demand.

30. BUYER'S SIGNATURES:

☐ SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)

BUYER Signature _____
Date _____ Time _____ ☐ A.M. ☐ P.M.

BUYER (Print Name) _____
Phone # _____ Cell # _____
City _____ State _____ Zip _____
Fax # _____

BUYER Signature _____
Date _____ Time _____ ☐ A.M. ☐ P.M.

BUYER (Print Name) _____
Phone # _____ Cell # _____
City _____ State _____ Zip _____
Fax # _____

31. SELLER'S SIGNATURES: On this date, We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all terms thereof on the part of the SELLER.

☐ SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER ☐ SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

SELLER Signature David S Fuller
Date 9-20-05 Time 10:15 ☒ A.M. ☐ P.M.

SELLER (Print Name) DAVID S Fuller
Phone # 888-3219 Cell # 861-2321
City Meridian State Ida Zip 8364
Fax # _____

Address 890 N Ten Mile
E-Mail Address _____

SELLER Signature Shirley A Fuller
Date 9-20-05 Time 11:15 ☒ A.M. ☐ P.M.

SELLER (Print Name) Shirley A. Fuller
Phone # 888-3219 Cell # _____
City Meridian State Ida Zip 8364
Fax # _____

Address 890 N. Ten Mile
E-Mail Address _____

EXHIBIT B

000039

RE-11 ADDENDUM # 1 (1,2,3, etc.)Date: 9/20/05

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTION CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement and Receipt for Earnest Money. ("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

PURCHASE AND SALE AGREEMENT DATED: 9/20/05 ID# 74683199ADDRESS: 880 N. Ten MileBUYER(S): Confluence Management and/or assignsSELLER(S): Dave and Shirley Fuller

The undersigned parties hereby agree as follows:

****continuation of the Earnest Money Agreement paragraph #10****

1. It is understood that seller intends to do a 1031 exchange with this sale, or a portion thereof. Buyer agrees to sign any additional documentation to accommodate said exchange at no additional cost to buyer.
 2. Buyer agrees to furnish to the seller a letter stating a valuation of \$8.00 per square foot for the buyers property on Locust Grove Rd.
 3. Seller to receive any and all funds paid for road right of way including land, landscaping, fencing, sprinklers and temporary easements.
- Escrow instructions by the title company will cover the receipt and disbursement of the right of way funds. It is understood that buyer will be deeding the right of way to ACHD and that the seller, Dave and Shirley Fuller will receive all of said funds paid by ACHD. Said amount has not been yet determined and Dave and Shirley Fuller retain the right to negotiate the amount with ACHD.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER: [Signature]Date: 9-20-05BUYER: [Signature]Date: 9-20-05SELLER: Daniel FullerDate: 9-20-05SELLER: Shirley A FullerDate: 9-20-05

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EXHIBIT C

000041

OBJ SUB Jct NO	VENDOR	REFERENCE	CHECK
	01 000 05823		05

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	GROSS AMOUNT	DISCOUNT	NET AMOUNT
08/22/06	08/22/06		83,921.00		83,921.00
TOTALS			83,921.00		83,921.00

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED ABOVE
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.



ADA COUNTY HIGHWAY DISTRICT
3775 ADAMS STREET
GARDEN CITY, IDAHO 83714

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND. THIS PAPER CONTAINS FLUORESCENT FIBERS AND OTHER SECURITY FEATURES.



ADA COUNTY HIGHWAY DISTRICT
3775 ADAMS STREET
GARDEN CITY, IDAHO 83714

BOISE OFFICE
WELLS FARGO BANK

92-379
1241

CHECK DATE
08/25/06

CHECK NO.
052044

PAY

Eighty-Three Thousand Nine Hundred
Twenty-One Dollars and 00 Cents

CHECK AMOUNT
\$ *****83,921.00
VOID IF NOT CASHED WITHIN 90 DAYS

TO THE
ORDER OF

TRANSACTION TITLE &
ESCROW
1750 FRONT ST.
BOISE ID 83702

John S. Stransky
Michael L. Brokaw 000042

EXHIBIT D

000043

Project Name: Ten Mile Rd, Franklin Rd / Cherry Ln
Project No.: 504003
R/W Parcel No.: 15/36
Township/Range/Section: T3N, R1W, Sec. 11

0300016395-NB1

(Reserved for Ada County Recorder)

WARRANTY DEED

THIS INDENTURE, made this 10th day of August, 2006,
LIBERTY PARTNERS, INC., State of
Idaho, the "GRANTOR", and ADA COUNTY HIGHWAY DISTRICT, a body politic and
corporate of the State of Idaho, the "GRANTEE";

WITNESSETH:

FOR VALUE RECEIVED, the GRANTOR has granted, conveyed, bargained and sold,
and does hereby grant, bargain, sell, convey and confirm to the GRANTEE and its successors
and assigns forever, that certain real property situated in the COUNTY OF ADA, STATE OF
IDAHO, more particularly described on Exhibit "A" attached hereto and by this reference made a
part hereof,

TOGETHER with all and singular the buildings, structures, improvements and fixtures thereto,
the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining,
the reversion and reversions, remainder and remainders, and rents, issues and profits thereof (the
"Premises").

Subject to those exceptions to GRANTOR's title as are set forth on Exhibit "B" attached
hereto and by this reference made a part hereof.

SUBJECT TO those exceptions to title to which this conveyance is expressly made
subject and those made, suffered or done by the GRANTEE: (a) the GRANTOR covenants to the
GRANTEE, its successors and assigns, that the GRANTEE shall enjoy the quiet and peaceful
possession of the Premises; and (b) GRANTOR warrants to the GRANTEE, its successors and
assigns, that GRANTOR is the owner of said Premises in fee simple and has the right and
authority to convey the same to GRANTEE, and GRANTOR will defend the GRANTEE's title
from all lawful claims whatsoever.

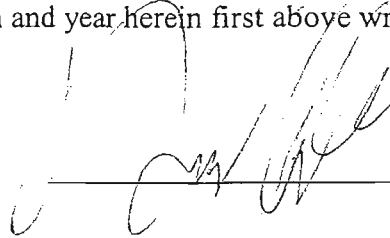
Warranty Deed, page 1
(10/27/01)

000044

The current address of the GRANTEE is:

Ada County Highway District
3775 Adams Street
Garden, Idaho 83714-6499

IN WITNESS WHEREOF, this WARRANTY DEED has been duly executed by and on behalf of the GRANTOR, the day, month and year herein first above written.

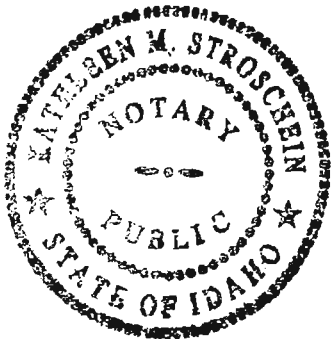


CORPORATE:

State of Idaho)
) ss.
County of Ada)

On this 10th day of August, 2006, before me, ~~David Callister~~ Kathleen M. Stroschein a Notary Public in and for the State of Idaho, personally appeared David Callister, known or identified to me to be the President, and ~~_____~~, known or identified to me to be the Secretary of the Corporation that executed this instrument or the person who executed this instrument on behalf of said Corporation, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Kathleen M. Stroschein
Notary Public for the State of Idaho
Residing at Boise Idaho
My Commission expires 6/30/10

Owner of Record: David & Shirley Fuller
Parcel: No. 15 (S1211233710)
ACHD Project: Ten Mile Road (Franklin to Cherry)
Project No.: 504003

EXHIBIT "A"

Legal Description

A parcel of land located in the SW 1/4 of the NW 1/4 of Section 11, Township 3 North, Range 1 West, Boise Meridian, Ada County, Idaho, said parcel also being a portion of Parcel 3 as shown in Record of Survey No. 1951, filed in Book G at Page 1979, filed as instrument number 9150717, records of Ada County being more particularly described as follows:

Commencing at the southwest corner of the SW 1/4 of the NW 1/4 of Section 11, said point being the POINT OF BEGINNING;

Thence N 0°24'49" E, 699.89 feet (formerly N 0°25'27" E, 699.89 feet) along the west boundary of the SW 1/4 of the NW 1/4 of said Section 11 to a point;

Thence leaving said west boundary S 87°36'01" E, 48.03 feet (formerly S 87°35'23" E) along the north boundary of Parcel 3 of said Record of Survey No. 1951 to a point;

Thence S 0°24'49" W, 648.56 feet along a line parallel to and measuring 48.00 feet from said west boundary of the SW 1/4 of the NW 1/4 to a point;

Thence S 44°35'09" E, 21.36 feet to a point, said point lying 35.00 feet from the south boundary of said SW 1/4 of the NW 1/4 of Section 11;

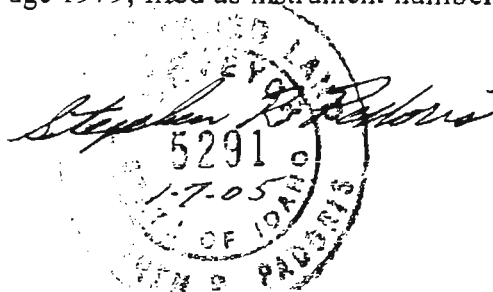
Thence S 89°11'15" E, 250.05 feet along a line parallel to and measuring 35.00 feet from said south boundary of the SW 1/4 of the NW 1/4 to a point on the east boundary of said Parcel 3;

Thence S 0°25'09" W, 35.00 feet (formerly S 00°25'27" W) along said east boundary to a point on the south boundary of said SW 1/4 of the NW 1/4;

Thence N 89°11'15" W, 313.15 feet (formerly N 89°10'57" W, 313.15 feet) along the south boundary of said SW 1/4 of the NW 1/4 to the POINT OF BEGINNING.

Said described parcel contains 42,956 Square feet (0.99 acres) and is subject to easements of record or in use. Said parcel contains 31,486 SF (0.72 acres) of existing Pine Avenue prescriptive right-of-way.

This legal description was prepared by the ACHD Survey Section from that Record of Survey No. 1951, filed in Book G at Page 1979, filed as instrument number 9150717, records of Ada County.



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Owner of Record: David & Shirley Fuller
Parcel: No. 36 (S1211233750)
ACHD Project: Ten Mile Road (Franklin to Cherry)
Project No.: 504003

Legal Description

A parcel of land located in the SW 1/4 of the NW 1/4 of Section 11, Township 3 North, Range 1 West, Boise Meridian, Ada County, Idaho, said parcel also being a portion of Parcel 4 as shown in Record of Survey No. 1951, filed in Book G at Page 1979, filed as instrument number 9150717, records of Ada County being more particularly described as follows:

Commencing at the southwest corner of the SW 1/4 of the NW 1/4 of Section 11, thence S 89°11'15" E, 313.15 feet (formerly S 89°10'57" E, 313.15 feet) along the south boundary of the SW 1/4 of the NW 1/4 of said Section 11 to a point, said point being the POINT OF BEGINNING;

Thence continuing S 89°11'15" E, 541.49 feet (formerly S 89°10'57" E, 541.49 feet) along the south boundary of said SW 1/4 of the NW 1/4 of Section 11 to a point;

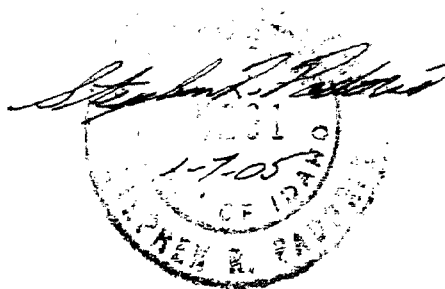
Thence leaving said south boundary N 0°48'45" E, 35.00 feet (formerly N 0°49'03" E) along the east boundary of said Parcel 4 to a point;

Thence N 89°11'15" W, 541.73 feet along a line parallel to and measuring 35.00 feet from said south boundary of the SW 1/4 of the NW 1/4 to a point on the west boundary of said Parcel 4;

Thence S 0°25'09" W, 35.00 feet (formerly S 0°25'27" W) along said west boundary of Parcel 4 to the POINT OF BEGINNING.

Said described parcel contains 18,956 Square feet (0.44 acres) and is subject to easements of record or in use. Said parcel contains 16,248 SF (0.37 acres) of existing Pine Avenue prescriptive right-of-way.

This legal description was prepared by the ACHD Survey Section from that Record of Survey No. 1951, filed in Book G at Page 1979, filed as instrument number 9150717, records of Ada County.



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Exceptions to Title

1. Ditch, road and public utility easements as same may exist over said premises.
2. Easement as granted to The Mountain States Telephone and Telegraph Company, by instrument recorded June 12, 1978, as instrument No. 7831378, of Official Records; for operation, maintenance and repair of its lines.
3. Rights and claims in and to that portion of said premises lying within the West Pine Street right of way.
4. Rights and claims in and to that portion of said premises lying within the Ten Mile Road right of way.
5. Rights and claims in and to that portion of said premises lying within the Ten Mile Stub Drain right of way.
6. Matters as disclosed by Record of Survey, recorded September 11, 1991 as instrument No. 9150717, of Official Records.

Michael R. Jones
MICHAEL R. JONES, PLLC
508 N. 13th Street
Boise, Idaho 83702
P. O. Box 7743
Boise, ID 83707
Telephone: (208) 385-7400
Facsimile: (208) 389-9103
ISB No. 2221
mrjones@mcleodusa.net

DEC 22 2008

J. DAVID NAVARRO, Clerk
By KATHY J. DIEHL
DEPUTY

Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID and SHIRLEY FULLER, a married couple,)	
)	
Plaintiffs,)	CASE NO. CV OC 0820018
)	
vs.)	ANSWER
)	
DAVE CALLISTER, an individual,)	
CONFLUENCE MANAGEMENT, LLC, an Idaho)	
Limited Liability Company, and LIBERTY)	
PARTNERS, INC., an Idaho Corporation,)	
)	
Defendants.)	
)	

COMES NOW Defendants, DAVE CALLISTER, (hereinafter "Callister"),
CONFLUENCE MANAGEMENT, LLC (hereinafter "CONFLUENCE") and LIBERTY
PARTNERS, INC. (hereinafter "LIBERTY"), named Defendants in the above entitled action,
by and through their attorney of record, Michael R. Jones, MICHAEL R. JONES, PLLC., by
way of answer to the Amended Complaint (referred to herein as "Complaint") on file herein
answers, alleges and states as follows:
ANSWER –

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have waived, or by their conduct are estopped from asserting the causes of action alleged in their complaint.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by failure of consideration.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their alleged damages.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs claim for relief should be barred as unconscionable

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs claim for relief should be barred because it seeks unjust enrichment.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs claim for relief should be barred because the alleged damages were avoidable and caused by Plaintiffs' actions.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs claim for relief should be barred against Callister who is not personally responsible for the obligations of either the limited liability company CONFLUENCE, or the corporation. LIBERTY.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs claim for relief should be barred against CONFLUENCE because CONFLUENCE assigned all right to the Commercial/Investment Real Estate Purchase and Sale Agreement that is subject of this suit to Defendant LIBERTY. The assignment was agreed to and accepted by

ANSWER –

Plaintiffs thereby releasing CONFLUENCE from all obligations to Plaintiffs pursuant to said Commercial/Investment Real Estate Purchase and Sale Agreement.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs claim for relief is barred against all Defendants because all contractual obligations contained in the Commercial/Investment Real Estate Purchase and Sale Agreement merged with the recorded Warranty Deed.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs claim for relief is barred against all Defendants because all contractual obligations, terms, conditions, contingencies contained in the Commercial/Investment Real Estate Purchase and Sale Agreement were satisfied at Closing.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs claim for relief is barred against all Defendants because all contractual obligations, terms, conditions, contingencies contained in the Commercial/Investment Real Estate Purchase and Sale Agreement were waived at Closing.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' complaint fails to state a claim against these answering Defendants upon which relief can be granted.

FIRST DEFENSE

Plaintiffs' complaint fails to state a claim against these answering Defendants upon which relief can be granted.

SECOND DEFENSE

Plaintiffs' complaint seeks unjust enrichment.

ANSWER –

ANSWER

1. Plaintiffs' complaint fails to state a claim against these answering Defendants upon which relief can be granted.
2. Defendants deny each and every allegation contained in Plaintiff's Complaint not specifically admitted herein.
3. Defendants are without information to form a belief as to whether Plaintiffs are residents of Ada County, Idaho and therefore deny the same. Defendants admit the remaining allegations contained in paragraphs 1-6 of Plaintiffs' Complaint. Defendant Callister was at all times pertinent to these claims acting in his representative capacity as either Manager of CONFLUENCE or as President of LIBERTY.
4. Defendants acknowledge that Dave Callister as Manager of CONFLUENCE signed on or about September 20, 2005 a document titled Commercial/Investment Real Estate Purchase and Sale Agreement. This documents is identified in the Complaint as Exhibit A. However, Defendants assert that the document identified as Exhibit A is incomplete. Further Defendants assert that the terms of the document speak for it and therefore deny the remaining allegations set forth in paragraph 7 of the Complaint.
5. Defendants admit that they were informed by Plaintiffs that Plaintiffs were negotiating with ACHD regarding Plaintiffs desired sale of certain right of way to ACHD in lieu of condemnation. Defendants deny that it was involved in any discussions with ACHD prior to the sale of the subject property to LIBERTY and therefore denies the remaining allegations contained in paragraph 8 of the Complaint.
6. Defendants deny the allegations contained in paragraph 9 of the Complaint. The

documents identified in the Complaint as Exhibit B speaks for itself. Defendant Callister was acting as Manager of CONFLUENCE and not acting in acting in his individual capacity.

7. Defendants are without sufficient information to form an opinion or belief as what ACHD knew and therefore denies the allegations contained in paragraph 10 of the Complaint.

8. Defendants deny the allegations contained in paragraph 11 of the Complaint.

9. Defendants deny that Plaintiffs were entitled to receive any of the proceeds paid by ACHD because the terms of the contract were as satisfied or were waived by Plaintiffs. There was no independent obligation that survived Closing and the conveyance and recording of the deed to Liberty Partners merged the agreement. Defendant Liberty admits that it received compensation from ACHD and that it is believed that the compensation was paid to Transnation Title and Escrow in the sum of \$83,921.00. Defendants deny all the remaining allegations of paragraph 12 of the Complaint.

10. CONFLUENCE and Plaintiffs had assigned the September 20, 2005 Commercial/Investment Real Estate Purchase and Sale Agreement to LIBERTY. Defendants deny the remaining allegations contained in paragraph 13 of the Complaint and specifically that Callister individually assigned any rights to LIBERTY.

11. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

12. Defendants state that the documents identified as Exhibit D to the Complaint speaks for itself and are without sufficient information to form an opinion as to the referenced Temporary Construction Easement and therefore denies the allegations set forth in paragraph 15 of the Complaint.

13. Defendants deny that Plaintiffs are entitled to any proceeds paid to LIBERTY by

ACHD and denies the allegations set forth in paragraph 16 of the Complaint.

COUNT ONE - BREACH OF CONTRACT
(Callister and/or Confluence Mangement)

14. Defendants incorporate by reference herein their Affirmative Defenses and General Defenses and responses contained in Paragraphs 1 through 13 of this Answer and further generally deny the allegations contained in paragraph 17 of the Complaint.

15. Defendants deny that Callister individually entered in a written purchase and sale agreement for the property that is subject matter of this lawsuit. Defendants admit that CONFLUENCE acting through and by its Manger entered into a written contract to purchase the subject land from Plaintiffs. Defendants deny the remaining allegations of paragraph 18 of the Complaint.

16. Defendants deny the allegations contained in paragraph 19 of the Complaint.

17. Defendants deny the allegations contained in paragraph 20 of the Complaint. Plaintiffs conveyed the land to Defendant, LIBERTY pursuant to the assignment of the contract.

18. Defendants deny the allegations contained in paragraph 21 of the Complaint.

19. Defendants deny the allegations contained in paragraph 22 of the Complaint.

COUNT TWO - UNJUST ENRICHMENT (Liberty Partners, Inc.)

20. Defendant LIBERTY incorporate by reference herein their Affirmative Defenses and General Defenses and responses contained in the Paragraphs 1 through 19 of this Answer and further generally deny the allegations contained in paragraph 23 of the Complaint.

21. Defendant LIBERTY denies the allegations set forth and contained in paragraphs 23 through 30 of the Complaint. Defendant LIBERTY received compensation from ACHD for which LIBERTY was entitled to receive as owner of the property conveyed to ACHD.

ANSWER –

LIBERTY had no obligations to pay Plaintiffs any money. Plaintiffs conveyed by Warranty Deed to LIBERTY title to the subject property without reservation or limitation.

PLAINTIFFS' ATTORNEY FEES

Defendants admit that Plaintiffs have engaged the legal services of the law firm Davison, Copple, Copple & Cox, LLP but deny any liability for payment of these attorney fees and are further without sufficient information and belief to admit or deny the alleged reasonableness thereof and therefore denies that Plaintiffs are entitled to an award of attorney fees or costs of bringing this action.

DEFENDANTS' ATTORNEY FEES

Defendants have retained the law firm of Michael R. Jones, PLLC to defend them in this action. Defendants are entitled to an award for the amount of the reasonable attorney fees and costs pursuant the contract and in accordance with Idaho Code §12-120(3) and §12-121, I.R.C.P.54

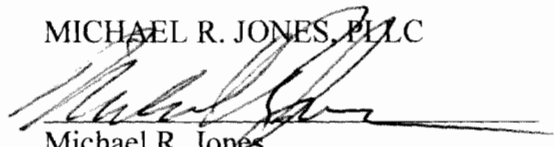
PRAYER

WHEREFORE, Defendants pray for relief as follows:

1. That the Complaint be dismissed against all Defendants with prejudice;
2. For costs incurred in defending Plaintiffs' Complaint;
3. That Defendants be awarded attorneys' fees pursuant to the terms of the Contract, and pursuant to Idaho Code §12-120 and §12-121 and I.R.C.P. Rule 54;
4. For such other and further relief that the Court deems appropriate.

DATED this 20th day of December, 2008.

MICHAEL R. JONES, PLLC


Michael R. Jones
Attorney for Defendants

ANSWER –

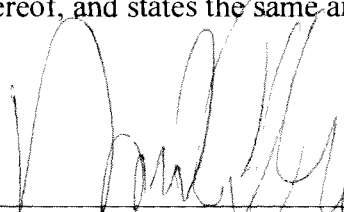
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VERIFICATION

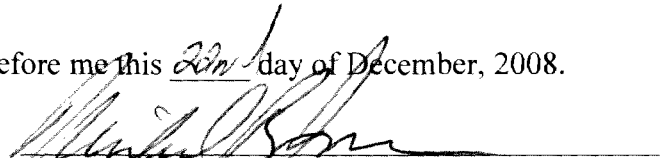
STATE OF IDAHO)
) ss.
County of Ada)

Dave Callister, being first sworn upon oath, deposes and says that he is fully authorized to sign this verification on behalf of himself individually and in his representative capacity as Manager on behalf of CONFLUENCE MANAGEMENT, LLC, and on behalf of LIBERTY PARTNERS, INC. as its President; that he is upon oath; he has read the foregoing document titled ANSWER, understands the contents thereof, and states the same are true to the best of his knowledge, information and belief.



Dave Callister, individually, as Manager on behalf
of CONFLUENCE MANAGEMENT, LLC and
as President on behalf of LIBERTY PARTNERS,
INC.

SUBSCRIBED AND SWORN to before me this 22nd day of December, 2008.



Notary Public for Idaho
Residing at Boise, ID
My Commission Expires: 11-13-2012

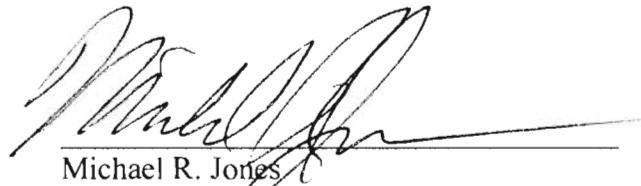
ANSWER –

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 21st day of December, 2008, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s):

E. Don Copple
Ed Guerricabeitia
DAVISON, COPPLE, COPPLE &
COPPLE
Washington Mutual Capitol Plaza, Suite
600
199 North Capitol Boulevard
Post Office Box 1583
Boise Idaho 83701

- ☒ U.S. Mail
- ☐ Certified Mail—Return Receipt requested
- ☐ Fax – 208-386-9428
- ☐ By Hand
- ☐ Overnight



Michael R. Jones
Attorney for Defendants

E DON COPPLE
ED GUERRICABEITIA
DAVISON, COPPLE, COPPLE & COPPLE
Attorneys at Law
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Boulevard
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
ISB Nos.: 1085 & 6148

Attorneys for Plaintiffs
David and Shirley Fuller

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID and SHIRLEY FULLER, a married couple,)

Plaintiffs,

vs.

DAVE CALLISTER, an individual,
CONFLUENCE MANAGEMENT, LLC, an Idaho
Limited Liability Company, and LIBERTY
PARTNERS, INC., an Idaho corporation,

Defendants.

CASE NO.: CV OC 0820018

PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT

COME NOW Plaintiffs, David and Shirley Fuller, by and through their attorneys of record of the firm, Davison, Copple, Copple & Cox, and hereby moves the Court pursuant to Rule 56 of the Idaho Rules of Civil Procedure to enter its Order granting partial summary judgment in favor of Plaintiffs on the grounds and for the reason that:

- 1) The doctrine of merger does not apply concerning the reservation of the condemnation proceeds paid by ACHD resulting in the dismissal of Defendants'

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT - I

NO. _____
A.M. _____ FILED 468 P.M.
JUN 23 2009
J. DAVID NAVARRO, Clerk
By L. AMES
DEPUTY

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ORIGINAL

ARB

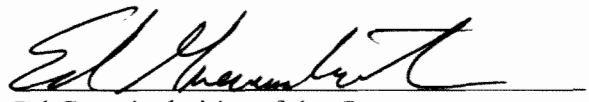
ninth affirmative defense;

- 2) That the assignment vesting the property in Liberty Partners did not relieve Defendant Confluence Management of its obligation and liability under the Commercial/Investment Real Estate Purchase and Sale Agreement dated September 20, 2005 resulting in the dismissal of Defendants' eighth affirmative defense; and
- 3) Defendants Confluence Management, LLC breached its obligations under the agreement in the amount of \$83,921.00, plus accrued pre-judgment interest from October 20, 2006.

This motion is made and based on the records and files herein and Affidavits of David Fuller and Ed J. Guerricabeitia filed herein. Plaintiffs desire to present oral argument on the motion.

DATED this 23rd day of June, 2009.

DAVISON, COPPLE, COPPLE & COPPLE


Ed Guerricabeitia, of the firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of June, 2009 a true and correct original of the foregoing was served upon the following by the method indicated below:

Michael R. Jones
Michael R. Jones PLLC
508 North 13th Street
Boise, Idaho 83702

 U.S. MAIL
 X Hand Delivery
 Facsimile Transmission:



Ed Guerricabeitia

AUG 24 2009

J. DAVID NAVARRO, Clerk
By _____

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID and SHIRLEY FULLER, a
married couple,

Plaintiffs,

vs.

DAVE CALLISTER, an individual,
CONFLUENCE MANAGEMENT, LLC, an
Idaho Limited Liability Company, and
LIBERTY PARTNERS, INC., an Idaho
corporation,

Defendants.

Case No. CV OC 0820018

**MEMORANDUM DECISION
AND ORDER ON PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

This matter came before the Court on the Plaintiffs' Motion for Partial Summary Judgment. The Court heard oral arguments on the motion on July 20, 2009. Ed Guerricabeitia appeared for the Plaintiffs and Michael R. Jones appeared for the Defendants. The Court took the matter fully under advisement at that time.

BACKGROUND

Plaintiffs owned certain real property in Ada County. Plaintiffs were in the process of negotiating with the Ada County Highway District (ACHD) on reasonable compensation for certain easement rights or a fee of a portion of the property via eminent domain. On September 20, 2005, Plaintiffs and Defendant Confluence Management LLC (Confluence) entered into a Commercial/Investment Real Estate Purchase and Sale Agreement. That same day, Plaintiffs and Defendant Confluence signed an Addendum to the Purchase and Sale Agreement. Plaintiffs did not complete negotiations with ACHD prior to transferring the property under the purchase and sale

000061

1 agreement. On September 22, 2005, Plaintiffs and Defendants signed another addendum which
2 assigned certain rights to Defendant Liberty Partners. Defendant Callister is both a member of
3 Confluence and the President of Liberty Partners. Also on September 22, 2005, Plaintiffs executed a
4 warranty deed transferring the property to Liberty Partners. It is undisputed that the warranty deed
5 does not contain the language of the first addendum. On August 10, 2006, Liberty Partners executed
6 a Sale and Purchase Agreement and warranty deed which transferred approximately one twelfth of
7 the property to ACHD. On August 25, 2006, ACHD paid Liberty Partners \$83,921.00 for the
8 smaller segment of the property. Plaintiffs seek the ACHD proceeds under the language of the
9 Addendum.
10

11 SUMMARY JUDGMENT STANDARD

12 Summary judgment is appropriate if "the pleadings, depositions, and admissions on file,
13 together with the affidavits, if any, show that there is no genuine issue as to any material fact and that
14 the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). If the evidence reveals
15 that no disputed issues of material fact exist, then only a question of law remains. *First Sec. Bank of*
16 *Idaho, N.A. v. Murphy*, 131 Idaho 787, 790, 964 P.2d 654, 657 (1998). The moving party is "entitled
17 to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing
18 on an essential element of her case with respect to which she has the burden of proof. *Celotex Corp.*
19 *v. Catrett*, 477 U.S. 317, 322-23 (1986)
20

21 In a motion for summary judgment, all disputed facts are construed liberally in favor of the
22 non-moving party and all reasonable inferences drawn from the record are to be drawn in favor of the
23 non-moving party. *See Williams v. Blakley*, 114 Idaho 323, 324, 757 P.2d 186, 187 (1988); *Blake v.*
24 *Cruz*, 108 Idaho 253, 255, 698 P.2d 315, 317 (1985). Idaho Rule of Civil Procedure 56(e) provides
25

1 that an adverse party may not simply rely upon mere allegations in the pleadings, but must set forth
2 in affidavits specific facts showing there is a genuine issue for trial. *See Rhodehouse v. Stutts*, 125
3 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). The affidavits either supporting or opposing the motion
4 must set forth facts that would be admissible in evidence and show that the affiant is competent to
5 testify. *Id.*, I.R.C.P. 56(e). To withstand a motion for summary judgment, the non-moving party's
6 case must be anchored in something more than speculation; a mere scintilla of evidence is not
7 enough to create a genuine issue. *Zimmerman v. Volkswagon of America, Inc.*, 128 Idaho 851, 854,
8 920 P.2d 67, 69 (1996).

9 10 **MOTION FOR SUMMARY JUDGMENT**

11 Plaintiffs seek summary judgment dismissing Defendant's Ninth Affirmative Defense that
12 the doctrine of merger prevents Plaintiffs' recovery. Defendants seek summary judgment that the
13 contract merged with the warranty deed.

14 In *Jolley v. Idaho Sec., Inc.*, 90 Idaho 373, 414 P.2d 879 (1966), the Idaho Supreme Court
15 explained the application of the doctrine of merger of a real estate agreement and a deed.

16 [T]he acceptance of a deed to premises generally is considered as a merger of the
17 agreements of an antecedent contract into the terms of the deed, and any claim for
18 relief must be based on the covenants or agreements contained in the deed, not the
covenants or agreements as contained in the prior agreement.

19 *Jolley*, 90 Idaho at 382, 414 P.2d at 884. An exception to the general rule of merger can be applied
20 "where under the contract the rights are conferred collaterally and independent of the deed; there
21 being no presumption that the party in accepting the deed intends to give up the covenants of which
22 the deed is not a performance or satisfaction." *Id.* The Court further clarified "[w]here the right
23 claimed under the contract would vary, change, or alter the agreement in the deed itself, or inheres
24

1 in the very subject-matter with which the deed deals, a prior contract covering the same subject-
2 matter cannot be shown as against the provisions of the deed." *Id.*

3 In *Sells v. Robinson*, 141 Idaho 767, 118 P.3d 99, (2005), the term of the agreement sought
4 to be enforced was a right to the timber on a parcel of land. *Id.* at 769, 118 P.3d at 101. There, the
5 Idaho Supreme Court held that the timber rights did not constitute a collateral agreement, but rather
6 inhered to the very subject matter with which the deed dealt, "the timber on [sellers'] remaining
7 property." *Id.* at 772, 118 P.3d at 104.

8 In the instant case, Plaintiffs argue that the doctrine of merger does not apply because the
9 reservation of the condemnation proceeds deals only with money and not the very subject matter of
10 the deed. Plaintiffs cite no case in which an Idaho appellate court has held a reservation of
11 condemnation proceeds in a contract survives the doctrine of merger. Instead, Plaintiffs would have
12 the Court adopt the view of two foreign condemnation cases which do not address the issue of
13 merger. In the case at hand, Plaintiffs assert that the term of the purchase agreement dealt only with
14 money, the ACHD proceeds. However, the Court finds that the term is the right of alienation of the
15 property, the proceeds from the sale of a portion of the greater tract of real property to ACHD. Had
16 Defendants sold the property at issue to a third party, Plaintiffs would have no right to a portion of
17 the proceeds. Had ACHD instituted a condemnation proceeding and taken eleven-twelfths of the
18 property, Plaintiffs would be unreasonable in seeking those proceeds in addition to the sale price
19 already paid to them. The Court finds that the right of alienation of real property inheres to the very
20 subject matter with which a warranty deed deals. The Purchase and Sale Agreement and Addendum
21 merged with the warranty deed. The warranty deed did not preserve a right to the proceeds of the
22
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1 ACHD sale. Defendants' motion for summary judgment that the doctrine of merger applies and
2 precludes recovery under the purchase and sale agreement is GRANTED.

3 Plaintiffs also seek summary judgment dismissing Defendant's Eight Affirmative Defense
4 that the assignment relieved Defendant Confluence of any liability under the Sales Purchase
5 Agreement. Plaintiffs contend that even if the Court were to find that the sales contract had merged
6 with the deed, Defendant Confluence is still liable under the sales contract because the assignment
7 of the right to purchase did not relieve Confluence of its contractual obligations under the sales
8 contract. Defendants counter that Confluence has no liability to Plaintiffs because it assigned all of
9 its rights under the purchase and sale agreement to Liberty Partners.
10

11 "The general rule would seem to be that where a contract is assignable the assignee acquires
12 all the rights of the assignor and takes the contract subject to all of the obligations of the assignor
13 therein stipulated." *Van Berkem v. Mountain Home Development Co.*, 132 Idaho 639, 641, 977 P.2d
14 901, 903 (Ct. App. 1999)(quoting *Anderson v. Carrigan*, 50 Idaho 550, 555, 298 P. 673, 674
15 (1931). In the case at hand, Plaintiffs signed an addendum on September 22, 2005 agreeing to the
16 assignment to Defendant Liberty Partners. The Court finds that all rights and responsibilities of
17 Confluence as the purchaser under the purchase and sale agreement were transferred to Defendant
18 Liberty Partners with Plaintiffs agreement. Plaintiffs' motion for summary judgment dismissing
19 Defendants' Eighth Affirmative Defense is DENIED.
20

21 Plaintiffs seek summary judgment holding that Defendants breached the sales purchase
22 agreement and entering judgment in favor of Plaintiffs for \$ 83,921.00. Because the Court has held
23 that the Sale and Purchase Agreement and Addendum merged with the warranty deed and the Court
24 has held that Defendant Confluence assigned the Sale and Purchase Agreement and Addendum to
25

1 Defendant Liberty Partners, Plaintiffs motion for summary judgment on the issue of breach of the
2 sales purchase agreement is DENIED.

3 Defendants seek summary judgment dismissing Callister as a party because Plaintiffs have
4 not alleged that he was acting in his individual capacity at any time during the transaction. After
5 reviewing the pleadings and memoranda and affidavits filed in support of summary judgment, the
6 Court finds that there are no facts or allegations before the Court that Callister was acting in any
7 capacity other than his corporate capacity. Defendants' motion for summary judgment dismissing
8 Callister as an individual defendant is GRANTED.

9
10 In their reply memorandum, Plaintiffs added a motion for summary judgment seeking
11 dismissal of Defendants' First, Tenth, and Eleventh Affirmative Defenses. Because these were not
12 raised in the initial motion and have not been fully briefed, these motions are not properly before the
13 Court. Therefore, the motion to dismiss Defendants' First, Tenth, and Eleventh Affirmative
14 Defenses is DENIED without prejudice.

15
16
17 IT IS SO ORDERED.

18 Dated this 24th day of August 2009.

19
20
21 
22 Ronald J. Wilper
23 DISTRICT JUDGE
24
25
26

CERTIFICATE OF MAILING

I, HEREBY CERTIFY that on the 24 day of August 2009, I caused a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT to be served by the method indicated below, and addressed to the following:

Ed Guerricabeitia
Davison, Copple, Copple & Copple
199 N. Capitol Blvd., Ste. 600
P.O. Box 1583
Boise, Idaho 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Michael R. Jones
Michael R. Jones, PLLC
508 N. 13th Street
P.O. Box 7743
Boise, Idaho 83707

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

By INGA JOHNSON
Deputy Clerk

RECEIVED

SEP 24 2009

Ada County

Michael R. Jones
MICHAEL R. JONES, PLLC
P.O. Box 7743
508 North 13th Street
Boise, Idaho 83707
Telephone: (208) 385-7400
Facsimile: (208) 389-9103
ISB No. 2221
Attorney for Defendants

NO. _____ FILED _____
A.M. 10-20 P.M. _____

SEP 28 2009

J. DAVID NAVARRO, Clerk
By _____ INGA JOHNSON
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID and SHIRLEY FULLER, a
married couple,

Plaintiffs,

vs.

DAVE CALLISTER, an individual,
CONFLUENCE MANAGEMENT, LLC,
an Idaho limited liability company, and
LIBERTY PARTNERS, INC., an Idaho
corporation,

Defendants.

CASE NO. CV OC 0820018

Judgment Against Plaintiffs
David and Shirley Fuller

THE ABOVE-ENTITLED MATTER, by way of Plaintiffs' Motion for Partial Summary Judgment, came on for hearing before the Court on July 20, 2009. Defendants did not file a motion for summary judgment. Nonetheless, in reliance upon the rule that the Court can grant summary judgment to any party--including a non-moving party-- this Court will grant summary judgment for the Defendants as further set out below, and in accordance, with the Court's Memorandum Decision and Order entered on August 24, 2009. The Court now enters the following judgment.

JUDGMENT AGAINST PLAINTIFFS DAVID AND SHIRLEY FULLER

000068

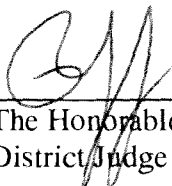
The Court denied the Plaintiffs' motion for partial summary judgment on the Defendants' Eighth and Ninth Affirmative defenses, and instead entered summary judgment for the Defendants on each of those affirmative defenses. Consequently, summary judgment is granted to the Defendants dismissing COUNT I of the Plaintiffs' complaint.

Because the Court's decision upholds the existence of an express contract that governs the rights of the parties' in this action, COUNT II of the Plaintiffs' complaint, which states an alternative basis for relief in unjust enrichment, is rendered entirely moot by the existence of an enforceable express contract. Consequently, summary judgment is granted to the Defendants dismissing COUNT II of the Plaintiffs' complaint.

THEREFORE, this Court grants summary judgment to the Defendant on all claims made by the Plaintiffs in their complaint. This ORDER shall constitute a final appealable judgment in this action.

IT IS HEREBY ORDERED AND DECREED.

Dated this 28th day of Sept, 2009.



The Honorable Ronald J. Wilper
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 28 day of Spt, 2009 I caused to be served a true and correct copy of the JUDGMENT upon the plaintiffs and defendants by the method indicated and addressed as follows:

E. DON COPPLE
ED GUERRICABEITIA
DAVISON, COPPLE, COPPLE & COPPLE
Attorneys at Law
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Boulevard
Post Office Box 1583
Boise, Idaho 83701-1583

☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile Transmission
☐ Other _____

Michael R. Jones
Michael R. Jones, PLLC
508 N. 13th Street
P. O. Box 7743
Boise, ID 83707

☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile Transmission
☐ Other _____

J. David Navarro
Clerk of the District Court

By INGA JOHNSON
Deputy Clerk

NO. _____ FILED _____
A.M. _____ P.M. _____

OCT 09 2009

J. DAVID NAVARRO, Clerk
By E. HOLMES
DEPUTY

E DON COPPLE
ED GUERRICABEITIA
DAVISON, COPPLE, COPPLE & COPPLE
Attorneys at Law
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Boulevard
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
ISB Nos.: 1085 & 6148

Attorneys for Plaintiffs
David and Shirley Fuller

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID and SHIRLEY FULLER, a married couple,))
))
Plaintiffs/Appellants,))
))
vs.))
))
DAVE CALLISTER, an individual,))
CONFLUENCE MANAGEMENT, LLC, an Idaho))
Limited Liability Company, and LIBERTY))
PARTNERS, INC., an Idaho corporation,))
))
Defendants/Respondents.))
_____))

CASE NO.: CV OC 0820018
NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENTS, DAVE CALLISTER, CONFLUENCE
MANAGEMENT, LLC AND LIBERTY PARTNERS, INC. AND THEIR
ATTORNEYS MICHAEL R. JONES, ATTORNEY AT LAW, 508 NORTH 13ST
STREET, BOISE, IDAHO 83702, AND THE CLERK OF THE ABOVE ENTITLED
COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, David and Shirley Fuller, appeal against the above

1. The above-named Appellants, David and Shirley Fuller, appeal against the above named Respondents to the Idaho Supreme Court from the Memorandum Decision and Order on Plaintiffs' Motion for Partial Summary Judgment, entered on August 24, 2009 and the Judgment entered in this case on September 28, 2009, Honorable Ronald J. Wilper presiding.

2. That Appellants, David and Shirley Fuller, have a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.

3. Appellants intend to assert the following issues on appeal:

- a. Whether the District Court erred in finding as a matter of law that the doctrine of merger applied to the reservation of condemnation proceeds in the real estate contract, rendering the reservation merged into the deed;
- b. Whether the District Court erred in finding as a matter of law that the document assigning all its rights under the real estate contract from Respondent Confluence Management, LLC to Liberty Partners, Inc. to which Appellants merely consented constituted a valid novation relieving Respondent Confluence Management, LLC of any obligations or liability under the real estate contract;
- c. Whether the District Court erred in finding as a matter of law that Respondent Dave Callister, individually, be dismissed from the lawsuit without the issue being raised and any facts presented in the record to support the ruling; and
- d. Whether the District Court erred in finding as a matter of law that Respondents were entitled to summary judgment;

4.
 - a. Is a reporter's transcript requested? Yes.
 - b. The Appellants request the preparation of the following portions of the reporter's transcript:
 - 1) The transcript of the hearing on Plaintiff's Motion for Partial Summary Judgment held on July 20, 2009;
Summary Judgment dated August 24, 2009

5. The appellant requests the following documents to be included in the clerk's record in addition to those automatically under Rule 28, I.A.R.:

- 1) Plaintiffs' Motion for Partial Summary Judgment;
- 2) Affidavit of Ed Guerricabeitia in Support of Motion for Partial Summary Judgment (and Attachments);
- 3) Affidavit of David Fuller in Support of Motion for Partial summary Judgment (and Attachments);
- 4) Affidavit of Michael R. Jones (and Attachments);

6. I certify:

- (a) That a copy of this notice of appeal has been served on the reporter.
- (b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.
- (c) That the estimated fee for preparation of the clerk's record has been paid.
- (d) That the appellate filing fee has been paid.
- (e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 9th day of October, 2009.

DAVISON, COPPLE, COPPLE & COPPLE



ED GUERRICABEITIA, of the firm
Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of October, 2009 a true and correct original of the foregoing was served upon the following by the method indicated below:

Michael R. Jones
Michael R. Jones PLLC
508 North 13th Street
Boise, Idaho 83702

☒ U.S. MAIL
☐ Hand Delivery
☐ Facsimile Transmission:

Dianne Cromwell
Tucker and Associate
650 W. Fort Street
Boise, ID 83701

☒ U.S. MAIL
☐ Hand Delivery
☐ Facsimile Transmission:



Ed Guerricabeitia

NO. _____ FILED _____
 AM. _____ PM. _____
 DEC 08 2009
 J. DAVID NAVARRO, Clerk
 By BRADLEY J. THIES
 DEPUTY

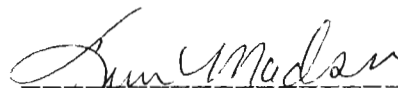
TO: Clerk of the Court
 Idaho Supreme Court
 451 West State Street
 Boise, Idaho 83720

(Case No. 37035-2009
 (FULLER
 (
 (
 (vs.
 (
 (CALLISTER
 (

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on November 25, 2009, I lodged an appeal transcript of 46 pages in length for the above-referenced appeal with the District Court Clerk of the County of Ada in the 4th Judicial District.

This transcript contains hearings held on.
 ...July 20, 2009


 KIM I. MADSEN
 Ada County Courthouse
 200 West Front Street
 Boise, Idaho 83702
 (208) 287-7583

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID and SHIRLEY FULLER, a
married couple,

Plaintiffs-Appellants,

vs.

DAVE CALLISTER, an individual,
CONFLUENCE MANAGEMENT, LLC,
an Idaho limited liability company, and
LIBERTY PARTNERS, INC., an Idaho
corporation,

Defendants-Respondents.

Supreme Court Case No. 37035

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Affidavit of Ed J. Guerricabeitia in Support of Plaintiffs' Motion for Partial Summary Judgment, filed June 23, 2009.
2. Affidavit of David Fuller in Support of Plaintiffs' Motion for Partial Summary Judgment, filed June 23, 2009.
3. Affidavit of Michael R. Jones, filed July 6, 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 25th day of November, 2009.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF EXHIBITS

00076

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID and SHIRLEY FULLER, a
married couple,

Plaintiffs-Appellants,

vs.

DAVE CALLISTER, an individual,
CONFLUENCE MANAGEMENT, LLC,
an Idaho limited liability company, and
LIBERTY PARTNERS, INC., an Idaho
corporation,

Defendants-Respondents.

Supreme Court Case No. 37035

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of
the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

ED GUERRICABEITIA
ATTORNEY FOR APPELLANTS
BOISE, IDAHO

MICHAEL R. JONES
ATTORNEY FOR RESPONDENTS
BOISE, IDAHO

J. DAVID NAVARRO
Clerk of the District Court

Date of Service: DEC 08 2009

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF SERVICE

00077

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID and SHIRLEY FULLER, a
married couple,

Plaintiffs-Appellants,

vs.

DAVE CALLISTER, an individual,
CONFLUENCE MANAGEMENT, LLC,
an Idaho limited liability company, and
LIBERTY PARTNERS, INC., an Idaho
corporation,

Defendants-Respondents.

Supreme Court Case No. 37035

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 9th day of October, 2009.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE TO RECORD

000'78